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ABSTRACT

The goal of this booklet is to assist debaters in developing problem-solving skills as represented in the 1976-77 debate topic: How can the criminal justice system in the United States best be improved? The sections of this document focus on the need for criminal justice reform; procedural steps in the criminal justice system; discussing or debating penal reform; lack of uniform codes; and gun control. The sections are geared toward the 1976-77 discussion questions and debate propositions. Such topics are discussed as police detention, prosecution, adjudication, procedures in the Department of Corrections, victimless crimes and prison population, need for new standards, pretrial delay, quality of probation and parole officers, mandatory sentences, and prisoner's rights. A lengthy reading list related to the debate topic is also included. (TS)

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ERIC First Analysis:
1976-77 National High School Debate Resolutions

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Copies of this book may be ordered from the Speech Communication Association for $1.50 per book. Payment must accompany orders.

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High school debaters can obtain a wealth of information on the 1976-77 Debate Resolutions through their use of the ERIC information retrieval system. The *Thesaurus of ERIC Descriptors* (including such descriptors as Criminals, Criminology, Correctional Rehabilitation, Corrective Institutions, Parole Officers, and Probation Officers) and the abstracts of documents found in *Resources in Education* and *Current Index to Journals in Education* can aid them in their research and help eliminate time-consuming reading of irrelevant materials. For information on how to make the most efficient use of the ERIC system, write

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Foreword

The *ERIC First Analysis* of the 1976-77 National High School Debate Resolutions was prepared by the author for publication by the Speech Communication Association in cooperation with the Educational Resources Information Center (ERIC) Clearinghouse on Reading and Communication Skills. This project was undertaken in response to a directive from the National Institute of Education (NIE) that ERIC provide educators with opportunities for knowledge utilization beyond that provided by the ERIC data base. NIE, recognizing the gap between educational research and classroom teaching, has charged ERIC to go beyond its initial function of gathering, evaluating, indexing, and disseminating information to a significant new service—commissioning from recognized authorities information analysis papers focusing on concrete educational needs.

ERIC First Analysis has been published annually since 1973. It has proven to be valuable in providing debaters with parameters for their research on the debate resolutions that are selected annually by the National University Extension Association's Committee on Discussion and Debate.

ERIC First Analysis is unique among ERIC publications in that it is intended primarily for high school students. Through a study of *ERIC First Analysis*, students should become aware of the breadth and depth of the issues involved in the debate resolutions. However, forensics educators will also find the resources useful for planning debate workshops or for teaching students how to go about the process of research in argumentation.

Since this analysis is truly a "first," it must be written in the space of one month after announcement of the national topic on February 1. The author's search for primary and relevant sources in the process of formulating the issues has been completed quickly and thoroughly—his ability to complete this very difficult project in such a short time is a tribute to his many years of experience as a forensics educator.

Barbara Lieb-Brilhart
ASSOCIATE DIRECTOR, ERIC/RCS

Bernard O'Donnell
DIRECTOR, ERIC/RCS

Introduction

Two thousand years ago Plato warned that a democracy can exist with strength only when the people know the essential features of problem solving. Debating as carried on by those schools emphasizing the highest of educational goals is unsurpassed as a program for developing problem-solving skills. The goal of *ERIC First Analysis* is to assist debaters and coaches in developing problem-solving skills as represented in the 1976-1977 debate topic.

The organization of *ERIC First Analysis* is based upon the thought areas essential to problem solving:

1. The problems (evils) existing in the debate topic area.
2. The institutions, programs, or policies presently being utilized to handle these problems: weaknesses and strengths.
3. The solution or solutions suggested by the topic.
4. The weaknesses and strengths of the proposed solution or solutions.
5. The new problems (disadvantages) that may be incurred by the new solution or solutions.

Debaters may discover that the following steps may maximize their use of *ERIC First Analysis:*

1. Read the entire analysis as uninterruptedly as possible in order to get a preliminary "bird's eye view" of the topic.
2. Further study should reveal the following characteristics:
   a. This is a preliminary and thought suggestive study, rather than a complete analysis of the topic.
   b. The content is derived from the analysis, definitions, and facts used by leaders and scholars in their writings or discussions of the topic area. The author has chosen to use only that which is in the current literature on the topic; he has not explored those peripheral or tangential areas which constitute the basis for the so-called squirrel cases.
   c. Specific affirmative or negative cases or arguments may be suggested by the material; however, the actual case or argument structures are left to individual debaters.

3. As debaters extend their research through additional books, articles, and documents, they should keep their study organized around the "five thought areas" of problem solving. As they read they should note the area in which the material belongs and should remember that sometimes a particular quotation, argument, or piece of evidence may be utilized in two or more of the five areas.
4. Debaters should utilize the five areas of problem solving as the major divisions for both the affirmative and the negative evidence file boxes. Some of the materials in *ERIC First Analysis* can be used either to provide ideas for subdivision of each of the five areas or as cards for the file.
5. The annotated bibliography is a list of some of the best books and articles on the topic. Once debaters have studied *ERIC First Analysis*, they should turn to those publications. Brief clues will reveal the particular thought areas stressed. The author has taken the liberty to give his suggested evaluation so that the debater and/or the coach can set priorities on making them available to the debate squad.

ERIC First Analysis is published early so that debaters can use it as a starting point in their study of next year's topic. Remember that this study does not constitute a complete coverage of the topic. It is hoped that it will stimulate wider study and provide a structure to make that study more meaningful.

I wish to express my gratitude to the following persons and their respective departments for supplying us with an abundance of materials and information:

Michael Aun and Joan Holland, Federal Bureau of Prisons
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To my assistants in gathering information, preparing the bibliography, typing the manuscript, and writing portions: Will Tracy, Richard Hayes, Leslie Hayes. To Jane Work and Barbara Lieb-Brilhart of the Speech Communication Association. To Linda Reed, Coordinator of Publications of ERIC/RCS.

Robert B. Huber
Burlington, Vermont
March 8, 1976

National High School Problem Area 1976-1977

How can the criminal justice system in the United States best be improved?

Discussion Questions

What programs should be adopted to improve the penal systems in the United States.

What reforms in the criminal justice process can provide a more equitable system of justice for all United States citizens?

What policy should the federal government adopt concerning possession of firearms by United States citizens?

Debate Propositions

Resolved: That a comprehensive program of penal reform should be adopted throughout the United States.

Resolved: That a uniform code of pre-trial procedures and penalties for all felonies should be established throughout the United States.

Resolved: That a comprehensive program of compulsory gun control should be established throughout the United States.

The Need for Criminal Justice Reform

Crime is a never ending problem to society. What are its causes? How can we prevent it? How can we make sure that we catch all those who commit it? How can we make sure of fair but certain prosecution? How can we make sure that we are just both to the accused and to society in our trial procedures? and, Once they are convicted, what is the best method of handling criminals? These questions are extremely difficult to answer, and never have these problems been more prominent than today. The latest F.B.I. *Uniform Crime Reports* dramatize this by revealing that crimes of violence occur at the rate of one every 33 seconds —one murder every 26 minutes, one forcible rape every ten minutes, an armed robbery every 71 seconds, and an aggravated assault every 70 seconds. Crimes against property are even more frequent: an act of burglary is committed every 10 seconds, larceny-theft occurs every 6 seconds, and a motor vehicle theft occurs every 32 seconds.[1]

Many people are alarmed by the increase in crime. The *Uniform Crime Reports* indicate the amounts of increase from 1970 to 1974[2]:

Crimes of violence	47%
Murder	40%
Aggravated Assault	47%
Forcible Rape	49%
Robbery	48%
of Chain Stores	184%
of Banks	94%
of Residences	63%
of Commercial Houses	42%
Crimes against property	37%
Burglary	53%
Nighttime residence	60%
Daytime residence	67%
Shoplifting	76%
Bicycles	58%
Motor Vehicles	11%

1

Of great concern to many people are those crimes which remain unsolved despite the great numbers that are cleared by the police.

> In 1974 law enforcement agencies made an estimated 9.1 million arrests nationally for all criminal acts except traffic offenses. The arrest rate was 46 arrests for each 1,000 persons. In 1973, there were 42 arrests for each 1,000 inhabitants. The arrest rate for big cities as a group was 57 per 1,000 inhabitants, for suburban areas 38, and in the rural areas the arrest rate was 28 . . .
>
> The nationwide clearance information shows that 21 percent of the Index crimes were cleared during 1974. In 1974 law enforcement agencies cleared 80 percent of the murder offenses, 51 percent of forcible rapes, 63 percent of aggravated assaults, and 27 percent of the robberies. Solutions in the property crime categories showed police cleared 18 percent of the burglaries in 1974, 20 percent of the larcenies and 15 percent of motor vehicle thefts.[3]

Because of more intense investigative effort and because witnesses are usually available for identification, crimes against the person have a higher clearance rate. The lack of clearance for crimes against property, however, is an area of very serious concern: 73 percent of the robberies, 80 percent of the larcenies, 82 percent of the burglaries, and 85 percent of the motor vehicle thefts remain unsolved.[4]

Another problem that disturbs many people is the great costs of crime and the inevitable increase in those costs as the crime rate rises and inflation continues to become worse. The total bill to the taxpayers in 1972 for all the areas of the criminal justice system (police protection, judicial, legal services and prosecution, indigent defense, corrections, etc.) was $11,721,194,000. The federal government expended $1,873,217,000, the states $3,341,507,000 and local governments paid out $7,372,509,000.[5]

The cost of crime to its victims is far greater. Obviously the crimes of violence resulting in murder or injury cannot be measured. Neither is there any complete study of crimes against property. The Chamber of Commerce of the United States has alerted its members to the high cost of crime:

> Reports indicate that shoplifting losses frequently eat up one to five percent of merchants' sales. A major department store recently invested $200,000 in security measures. A survey by the President's Commission estimates a bill of $1.5 billion for prevention equipment and services.
>
> Estimates put a billion dollar annual price tag on truck hijacking alone. . . . Recent figures indicate that thefts at airports result in millions of dollars of air cargo losses each year, as do thefts of passenger baggage. . . . A burglar apprehended in a large midwestern city admitted stealing property worth more than $200,000. Addicts in another large city reportedly account for most of the 125,000 burglaries that occur each year and run up an annual $2.5 billion theft bill there. . . . Some conclude that the nationwide cost of crime attributable to drug abuse is $5 billion.[6]

The 1970 *Uniform Crime Reports* also discuss the cost of crime:

> The cost of organized crime . . . may total as much as $50 billion annually. . . . During 1969, those burglaries reported by police to the F.B.I. cost vic-

tims over $620 million, the average loss being $318 for each burglary. Residential burglaries accounted for $363 million of the total . . . and auto thefts resulted in a net loss of $140 million to car owners.[7]

One of the problems of greatest concern is the recidivist, the person who continues to break the law. The 1974 *Uniform Crime Reports* reveal the extent of the problem for those arrested between 1970 and 1974:

> Of these 207,748 individuals, 135,470 (65 percent) had been arrested two or more times. These individuals had an average criminal career of five years and five months (number of years between the first and last arrest) during which time they were arrested an average of four times each. The 207,748 offenders had a total of 835,000 documented charges during their criminal careers, with 277,014 reported convictions and 109,657 imprisonments for six months or more. . . .
>
> Sixty-seven percent of the offenders released after serving their prison time were rearrested within three years. Of those people released on parole, 64 percent repeated, and 48 percent of those placed on probation repeated. Of those persons acquitted or who had their cases dismissed in 1972, 59 percent were rearrested for new offenses within three years.[8]

Another great cause for concern is the tendency for violations of the law to exist throughout society. One can quickly discern that this is true of traffic violations, particularly with a nationwide 55-mile-an-hour maximum speed limit. Contrary to public opinion, however, the tendency to commit more serious crimes is quite prevalent—people are not divided between "the good guys and the criminals." Several studies of this nature have been made. One study of 1700 persons revealed that 91 percent of this random sample had committed crimes other than traffic offenses for which they might have been sentenced:

> In this study, 1,020 males and 670 females were asked which of 49 offenses they had committed. The list included felonies and misdemeanors, other than traffic offenses. . . . Thirteen percent of the males admitted to grand larceny, 26 percent to auto theft, and 17 percent to burglary. Sixty-four percent of the males and 27 percent of the females committed at least one felony for which they had not been apprehended. Although some of these offenses may have been reported to the police by the victims and would thus appear in official statistics as "crimes known to the police," these offenders would not show up in official arrest statistics.[9]

Perhaps the greatest manifestation of the need for reform is the failure of our corrections systems to achieve hoped for goals. The major goals of corrections systems are *to deter, to rehabilitate, and to reintegrate criminals into society.* These aims are also expressed in another way, as the "Three R's"—Retribution, Rehabilitation, and Reintegration.

In theory, the corrections systems are designed to accomplish these goals. Upon pronouncement of sentence by a judge, a person who has been found guilty of committing a crime is turned over to the division called corrections for placement in one of a number of programs. Those placed on probation are turned over to a probation officer. Those sentenced to incarceration are sent to jail, correctional centers, or prison. Juveniles have their own detention centers or

programs, which differ among the various government agencies having jurisdiction.

To a large extent, however, these programs have not been successful. That the goal of deterrence falls short of fulfillment is evidenced by the amount of crime that exists, the continual increase in the crime rate, and the great numbers of recidivists. Many studies have been made evaluating efforts at rehabilitation, the second goal. Robert Martinson, after researching these studies, concluded, "I am bound to say that these data, involving over two hundred studies and hundreds of thousands of individuals as they do, are the best available and give us very little reason to hope that we have in fact found a sure way of reducing recidivism through rehabilitation."[10] Likewise, the great number of criminals who continue to break the law after completing their last trip through the criminal justice system is cited as evidence of lack of success in meeting the third objective of corrections systems, reintegrating the criminal into society.

Probably the most discouraging facet of the picture of crime in the United States is that attempted reforms of the past and the experimental programs underway are failing to provide reliable solutions to the many perplexing problems within our criminal justice structure. Crime continues to increase, the public becomes more disturbed, politicians grasp for unproven solutions, and personnel hired to operate the corrections systems are frustrated by their inability to find reliable answers to the question, "What works?"

NOTES

1. *Crime in the United States—Uniform Crime Reports for 1974* (Washington, D.C.: Federal Bureau of Investigation, 1975), p. 9.
2. Ibid., pp. 11-39.
3. Ibid., p. 42.
4. Ibid., p. 43.
5. Michael J. Hindelang, Christopher S. Dunn, Alison L. Aumick, and L. Paul Sutton, *Sourcebook of Criminal Justice Statistics—1974* (Albany, New York: Criminal Justice Research Center, 1975).
6. *Marshalling Citizen Power Against Crime* (Washington, D.C.: Urban Affairs Division of the Chamber of Commerce, 1970), p. 6.
7. *Crime in the United States—Uniform Crime Reports for 1970* (Washington, D.C.: Federal Bureau of Investigation, 1971), p. 7.
8. *Uniform Crime Reports for 1974*, op. cit., p. 47.
9. *The Challenge of Crime in a Free Society*, a report by the President's Commission on Law Enforcement and Administration of Justice (Washington, D.C.: Government Printing Office, 1967), p. 43.
10. Robert Martinson, "What Works—Questions and Answers about Prison Reform," *The Public Interest* 35 (Spring 1974): 49.

Procedural Steps in the Criminal Justice System

In order to make an intelligent analysis of our criminal justice system, it is wise to picture accurately the steps through which criminals go from detection to the completion of the sentence. A simple analysis based upon the persons chosen by the public to take charge would cover *police detection, prosecution, adjudication, and corrections.* A detailed breakdown of these areas will help us picture the many spots where decisions must be made. Wherever decisions are made great variations may occur, variations so great that injustice may arise.

Police Detection

Obviously, a commission of a crime is the starting point. Many citizens choose not to report, and the police are not brought into the picture. Police enter the picture by direct *detection* or by *investigation* of crimes reported to them. When the police force is overburdened, decisions of priority based upon such things as seriousness of the crime, availability of leads, and chances of identification must be made. Once identified, the suspect is arrested and taken before a booking administrator or a magistrate where the record for the arrest is made. At this point the prisoner is released upon his or her own recognizance, assessed bail, or incarcerated. When feasible, juveniles are remanded to the custody of their parents. Investigation by the police may continue into the trial stage.

Prosecution

At this point the prosecutor enters the picture and becomes responsible for the procedures. After screening the evidence to determine the charge, the prosecutor can do one of several things: (1) drop the charges; (2) reduce the charges to a lesser charge; (3) "plea bargain" with the defense attorney, a process of reducing the charge for a plea of "guilty" so the case won't have to go to court; or (4) prosecute on the original charge. A fifth alternative is entering the picture more often in recent years. It is called "diversion" and is a "favored term used to describe any number of procedures designed to provide accused or convicted offenders with an alternative to traditionally prescribed correctional actions." [1]

The accused next is given a preliminary hearing before a judge to test the weight of the evidence. The alternative decisions here may be to dismiss the charges, reduce them, or continue the original charge. Preliminary hearings in many jurisdictions are held only for people accused of the more serious crimes.

The third pre-trial step of the prosecutor is to take the case to the grand jury for an indictment or to prepare an "information charge" indicating the specific statutory crime committed. The grand jury has the power to indict or to refuse to indict. Various states and localities do not utilize the grand jury as part of their systems; instead, they utilize the information charge exclusively.

The fourth pre-trial step initiated by the prosecutor is arraignment in front of a judge. The defendant appears with his or her lawyer; defendants who are indigent may be assigned a court-appointed lawyer. The plea is entered at this point. If the plea is "guilty," the defendant by-passes the trial step. Ninety percent of the cases are settled in this way. If the plea is "not guilty," the defendant chooses to stand trial by judge or by jury. The charge may be reduced at any time prior to trial either in return for a plea of guilty or for other reasons. It is at this point in the procedure that diversion can be utilized, if such programs are available.

Adjudication

With the pre-trial steps completed, the case goes to court. The processes within the trial have been made familiar to most through books, movies, and television. The jury is chosen and sworn in unless the defendant has chosen to utilize only a judge. The case for the prosecution is presented; the defense for the accused is made. The determination of guilt is then considered by the judge or jury.

The process of adjudication does not end here, however. In most cases involving a felony, a probation officer is directed to conduct a "pre-sentence investigation," which includes a complete history of the criminal—his or her parents, childhood, previous convictions, schooling—and may include psychiatric examinations as well as interviews with friends and acquaintances of the criminal. The write-up concludes with a recommendation by the probation officer for either probation or incarceration. The convict is then brought into court for sentencing by the judge. (In a few jurisdictions the jury or a newly constituted jury may be called upon to pronounce the sentence.) In most jurisdictions, the judge may pronounce the sentence and suspend it, place the person on probation, or direct that the prisoner be incarcerated. Legislatures have set up guidelines for choosing among these alternatives depending upon the crime, with most jurisdictions prescribing what minimums and maximums may be assessed. Some jurisdictions use "indeterminate sentences," such as zero to twenty years for second degree murder; this means that the convicted person will carry the sentence for those twenty years, but, upon the recommendations of the personnel in the department of corrections and after a hearing by the parole board, it has been decided that the person may serve the later portion of the sentence out in the community. Some jurisdictions may use a "mandatory" sentence in which a certain minimum period of incarceration is required by

statute. Some people advocating greater use of punishment and hoping for more deterrence recommend greater use of this type of sentence. Others recommend the use of a "flat" sentence in which only one length of incarceration is prescribed. Maximum use of flat sentencing would eliminate the use of the system of parole and would tend to go in the direction of having all persons convicted of the same crime serve the same sentence.

Procedures in the Department of Corrections

Probation. After being sentenced, the convicted person is turned over to the Department of Corrections. A person who has been put on probation is under the jurisdiction of the court but is placed under the supervision of a probation officer, who is an employee of the Department of Corrections. Ideally the probation officer serves as a counsellor to help the convicted person establish a personal environment devoid of negative influences that might cause the person to commit further criminal acts. The probation officer helps the probationer establish an improved family life and get more education, more vocational training, a job, mental health counseling, or drug or alcohol rehabilitation as may be needed. Surveillance of the probationer is an essential part of the probation officer's duties. Although these duties are usually de-emphasized, the probationer must live up to the conditions of probation. There are general conditions that are applied to all probationers: they are not to commit a crime punishable by law; they are not to use drugs; they are to refrain from excessive use of alcohol; and they are not to travel outside the legal jurisdiction of the probation officer (outside the state) without written consent of the officer. Sometimes special conditions of probation are added by the judge to those mentioned above, such as compulsory attendance at drug or alcohol rehabilitation centers.

Should a probationer violate the conditions of probation, the probation officer issues a statement of "just cause" and the Court of record where the probationer was sentenced holds a probation revocation hearing. Present at such a hearing are the probationer, the probation officer, the judge of the Court of record, and a lawyer, either of the probationer's own choosing or from the public defender's office. The probationer may waive the right of representation by a lawyer. Corroborating evidence in the form of documents or testimony of witnesses may be utilized. The judge, upon the evidence presented, decides the probationer's guilt or innocence of violation of probation. A probationer who is found guilty is usually incarcerated for the remainder of the period of the sentence. In some cases or areas the judge may find the probationer guilty of violation but may allow him or her to continue on probation if extenuating circumstances seem to warrant it.

Incarceration. The first procedure for the convict in prison is screening. The complete file of arrest, pre-trial procedures, sentencing, and so on, is utilized. A variety of tests and examinations are made that reveal the needs of the incarcerated individual. Intelligence tests, vocational interests tests, psychiatric reports, and the like, are utilized. The screening board meets, studies the data, and assigns the convict to the institution which will provide the best opportunity

for the programing chosen. In smaller communities such choices cannot be made, since the local jail constitutes the only institution. Most states and the federal government make use of this process.

The Federal Bureau of Prisons has under its jurisdiction six penitentiaries for older adults and hardened criminals, thirteen correctional institutions for younger adults, three specialized reformitories, three metropolitan correctional centers, four prison camps, five youth and juvenile institutions, and eleven community treatment centers. They separate the juvenile and young offenders from the older criminals and try to distribute the rest so they can utilize special training programs. To the best of their ability and resources, the states try to follow the pattern established by the Federal Bureau of Prisons.[2]

Upon completion of the screening process, the convict is transferred to the chosen institution and proceeds through the program selected as a result of that process. All of the programs include continued schooling to complete high school or college educations, vocational training, group and individual counselling, drug and alcohol rehabilitation, and mental health counselling. Some operate specific industries so that work training can be made more realistic. Where feasible, neighboring community facilities are utilized to augment these programs. Day passes and work furloughs are employed when the convict can be trusted outside the prison walls to hold down a regular job or to attend a high school or college. Often, in preparation for parole, extended furloughs are given as a trial period for the convict to return home and reestablish family relationships. A lot of experimentation and many new programs are being tried in order to provide greater success. The Law Enforcement Assistance Administration of the Department of Justice is carrying on some 650 of these programs in order to provide help for the 46,000 criminal justice agencies throughout the country.[3]

Parole. As a prisoner approaches the completion of the minimum sentence handed down by the court, prison officials begin to plan for his or her appearance before the parole board. A parole officer is assigned to the prisoner, and plans for parole are made. The prison officials look over the conduct of the prisoner, the progress the prisoner has made for release, and the degree of stability he or she has achieved. The prisoner's case workers and counsellors and the superintendent (or an appointed representative) meet to determine whether the institution is ready to recommend the inmate for parole. The parole officer makes an independent study and recommends that the prisoner should or should not be paroled.

A parole packet of materials is prepared and sent to the parole board members for study. The packet includes all the pertinent data about the convict: the report of the arresting officer, the charge, the plea, the sentence of the court, the pre-sentence report of the social history and background of the person, psychiatric reports, the programs in which the prisoner participated while incarcerated, the prisoner's adjustment to the prison atmosphere, and the recommendations of the institution and the parole officer and the reasons for these recommendations.

Parole board hearings are conducted according to the legislation that exists within their own jurisdiction; for example, state boards are bound by state law, and the federal board is bound by congressional action. Federal and/or state court decisions also prescribe rules of conduct. These rules are chiefly derived from decisions which protect the prisoner at the hearing. For example, the prisoner's right to have a lawyer present or have one appointed is affirmed.

The parole board is an autonomous group, usually composed of three or five members, whose decision is final. The hearing is held in a comfortable atmosphere, without the extremely structured atmosphere of the original trial. The parole board members may question various facets of the reports, while the prospective parolee may produce other supporting documents or witnesses. If the parolee's lawyer is present, he or she may speak. The parolee may waive the right to have a lawyer. Upon the completion of the hearing, the decision is announced; it may be that the prisoner is paroled to a certain date or to an open date. In the latter case the date is set after a careful plan is worked out by the parolee and approved by the parole officer. The parole plan usually consists primarily of a reasonable place to dwell and a job to provide a living. In some few cases a special condition, such as further mental health consultation, might be required. Of course the parole board also has the power to deny parole.

The conditions of parole are virtually the same as those described above for probationers. The same people who serve as probation officers may also handle parole cases. Should the conditions of parole be violated, the parole officer prepares the statement of "just cause," and the parolee is brought to the revocation hearing. Attending the revocation hearing are the parole officer, the parolee, the parolee's lawyer (unless that right has been waived) and the members of the parole board. Evidence in the form of documents and testimony of witnesses may be utilized. The accused parolee makes the plea of guilty or not guilty to the charges. At the end of the hearing the board announces its decision. The parolee who is convicted is returned to prison. In many jurisdictions, even though the parolee is found to stand in violation, the parole board may allow parole to continue, if circumstances seem to warrant it, and may attach additional conditions.[4]

Paroling a prisoner does not constitute pardon. It means that the prisoner can serve the balance of his or her sentence out in society under the supervision and counselling of a parole officer. To pardon is the function of the president of the United States for federal prisoners and of state governors for state prisoners.

Eventually, of course, the maximum of the sentence is reached, and the convicted person, whether incarcerated, paroled, or on probation, is free of the criminal justice system. This is ultimately true of 98 percent of those arrested and found guilty.[5]

NOTES

1. Caplan, Gerald, in the Foreword of *The Dilemma of Diversion* (Washington, D.C.: U.S. Department of Justice, Law Enforcement Assistance Administration, 1975), p. iii.
2. *Federal Prison System Facilities* (Washington, D.C.: Federal Bureau of Prisons, 1974).
3. *A Compendium of Selected Criminal Justice Projects* (Washington, D.C.: U.S. Department of Justice, Law Enforcement Assistance Administration, 1975). Describes briefly each of these 650 projects.
4. Upon his retirement as Director of Debate at the University of Vermont, the author was appointed by the governor to be a member of the Vermont Parole Board. This is the description of Vermont Parole Board hearings. They are typical of those held throughout the country. Exceptions should be researched.
5. *The National Conference on Corrections* (Richmond: Virginia Division of Justice and Crime Prevention, 1971), p. 5.

Discussing or Debating Penal Reform

Discussion: What programs should be adopted to improve the penal systems in the United States?

Debate: Resolved, that a comprehensive program of penal reform should be adopted throughout the United States.

To define a debate topic realistically would be to see how personnel in the field, scholars, and government officials utilize the terms involved. Members of Congress, the American Bar Association, and the Law Enforcement Assistance Administration tend to call the whole process described in the preceding section "the criminal justice system." The "penal system" is that part of the system that takes control of the criminal after he or she is found guilty and is sentenced; it encompasses probation, incarceration in jails and prisons, and parole. To limit the debate to that phase known as "corrections" is unrealistic, since the philosophy of legislators, the laws they enact, the choices of the prosecutor to plea bargain or to use diversion, and the type and length of sentence handed down by the judge have strong effects upon the handling of prisoners after sentencing. On the other hand, a debate discussing "a comprehensive program of penal reform" which omitted entirely any references to our detention centers, our jails, our reformatories, and our penitentiaries would be a strange one. Thus, the topic demands that the reform or reforms suggested shall either constitute or produce "penal" reform and shall be "comprehensive" in nature.

The following guidelines may help debaters formulate better definitions:

1. Use the definitions of authorities in the field.
2. The "penal" part of the system is that which deals with the sentence and its prescribed punishment.
3. A comprehensive program would consist of one or more reforms in the area of punishment.
4. A comprehensive program could include but could not be limited to pretrial reforms.
5. Implementation throughout the United States would vary according to the type of reforms suggested but would probably include all governmental jurisdictions as well as all land areas.

Problems of the Whole System which Influence Penal Reform

Philosophical Differences

There are a variety of problems confronting the whole justice system that have their influence on the procedures used in handling prisoners. The first and probably most important lies in the differences in philosophy regarding the handling of those who break the law. There is the "get tough" attitude vs. the "lenient." There is the "lock-them-up-in-cages" philosophy vs. the "humane treatment." There is the belief that we should "emphasize punishment and deterrence" rather than "waste money on rehabilitation programs that don't seem to be very successful." The unfortunate part of these philosophies is that they are dilemmas; there seems to be no way by which these conflicting points of view can be resolved. The results are conflicting laws, wide variances in treatment of the criminal, and a confused and frequently disturbed public.

Arbitrary Decisions Leading to Differing Treatments

Secondly, the numerous arbitrary decisions that must be made among personnel with such differing philosophies result in widely differing treatment for the commission of similar crimes. The police must establish priorities in order to determine which crimes they will investigate. The patrol officer must decide whether to give a warning or make an arrest. The attitude of the magistrate determines whether bail is set or a prisoner is released. The prosecutor has a multiplicity of choices. The sentences pronounced by judges vary widely, depending on the toughness or leniency of their attitudes. Throughout the corrections part of the system, there are great numbers of decisions to be made. These arbitrary decisions at so many steps along the criminal process road seem to make it impossible for the system to produce "equal justice under the law."

Lack of Financial Support

The third grave problem is the lack of money in all areas of the criminal justice system. Lack of money results in drastically overcrowded prisons, jails, and juvenile treatment centers; lack of money means the hiring of guards too busy or incapable of being trained as counsellors; lack of money leaves corrections administrators paying salaries which are not competitive with those of private industry—all of these result in the inability of the system to attract top-flight personnel. Lack of money means too few facilities and teachers to build good educational programs; vocational programs in many prisons are completely unavailable. It means too few specialists and too little research and testing of solutions. It results in inadequacies all down the line.[1]

Victimless Crimes and Prison Population

A fourth serious problem is the flooding of the justice system with people committing victimless crimes—crimes in which nobody is hurt except the person committing the crime. Crimes of violence are crimes that bring bodily injury to the victim. Crimes against property deprive the victim of items that have cost

money to purchase or build. Following are some of these victimless crimes and the number of arrests made in 1974[2]:

Weapons: carrying, possession, etc.	170,300
Prostitution and commercialized vice	68,400
Narcotic drug law violations	642,100
Opium—cocaine and derivatives	101,500
Marijuana	445,600
Synthetic or manufactured narcotics	27,600
Other dangerous narcotic drugs	67,400
Gambling	61,900
Drunkenness	1,332,600
Vagrancy	44,700
Suspicion	45,900
Curfew and loitering law violations	151,000
Runaways	239,600

These arrests total 2,756,500 for 1974 only. Once arrested, the offenders must be dealt with by the other divisions of an already seriously overcrowded system.

Rate of Recidivism

A fifth problem is one of the most widely discussed because it is so frustrating: attempted reforms are failing to lower the rate of recidivism. Through the past decade many new programs and many new reforms have been tried. Despite all efforts, the results have been discouraging. Robert Martinson, Associate Professor and Chairman of the Department of Sociology at the City College of the City University of New York, and his colleagues were called upon by the New York State Governor's Special Committee on Criminal Offenders to make an evaluation of the various efforts for rehabilitation for criminals and to recommend the best programs for the state. An evaluation of 231 studies led them to make the following conclusion: "*With few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism.*"[3] The harsh treatment of criminals in earlier centuries, the nineteenth-century Quaker influence, under which prisoners meditated over their sins while sitting in their cells, and the emphasis on rehabilitation of the twentieth century have failed to reveal the best solution or solutions to the perplexing problems of crime.

Need for New Standards

A sixth problem arises from the slowness of legislative and other criminal justice personnel to study and initiate new standards throughout the criminal justice system. The American Bar Association, through their Project on Standdards for Criminal Justice, the Council of State Governments, and, more recently, the National Advisory Commission on Criminal Justice Standards and Goals (of the U.S. Department of Justice) undertook the huge task of setting

up these standards. The extensive studies of the following organizations were also included: Advisory Commission on Intergovernmental Relations; American Correctional Association; American Law Institute; National Conference of Commissioners on Uniform State Laws; National Council on Crime and Delinquency; National Institute of Law Enforcement and Criminal Justice (U.S. Department of Justice); and National Sheriffs' Association.

This monumental work is described and discussed in *Compendium of Model Correctional Legislation and Standards*, second edition.[4] These standards constitute definitive suggestions for improvement in every area of corrections, suggestions that affirmative debate teams will probably include in their reform proposals. Furthermore, the divisions of the book indicate what a multitude of authorities believe is the area of our "penal" system: sentencing, probation, parole, prisoner treatment and rights, post-conviction remedies, and interstate compacts for handling prisoners across state lines. The problem is that although these suggested models of standards have been set up by the leaders in the criminal justice world, legislatures and corrections administrators have been slow to study and adopt them.

Pretrial Delay

A seventh problem is pretrial delay. Because of the increasing number of crimes committed, the fact that the number of judicial districts has not increased with the increases in population, and the absence of legislative mandates for speedy trials, persons accused of crimes are held in suspense, often in jail, for unduly long periods of time. It has happened in misdemeanors that the time spent in jail by people awaiting trial has been longer than the judge's sentence. Senator Sam Ervin, Jr., in his remarks at the congressional hearings for the Speedy Trial Act, gave a well-documented sampling of these long delays:

> The median time for disposition of a criminal case (federal) is 6.3 months. . . . In some districts it runs up to 12 and 15 months. My information is that the situation is at least as bad in many state courts. In one Eastern metropolis the average time from arrest to disposition of a felony is 6.5 months while many cases run much longer. Other studies show an average lapse of more than 8 months. . . . I understand that in many state courts a disposition time of two years or more is not uncommon.[5]

Public Apathy

The eighth, and perhaps the greatest problem is the lack of knowledge of the public and its reluctance to help. Personnel involved in the criminal justice system again and again hear the comment, "We should lock those criminals up and throw away the key." The average citizen doesn't know that prisoners cost $11,000 a year if incarcerated, but only $365 per year if on probation or parole. Nor does the average citizen know that far greater numbers of criminals are serving their sentences outside on probation or parole than in prison. For example, in Vermont, of the 3200 serving sentences, 2800 are on probation or parole, while only 400 are incarcerated. To incarcerate all of its convicted criminals, Vermont would have to have eight times the prison space, and since, as in

most areas, Vermont's correctional centers are overcrowded, it would mean huge appropriations to build more prisons.

Since probation, parole, and many regular and special educational programs must take place outside prison walls, it is essential that the public understand, accept, and take part in these programs. Unjustified fears and apathy become strong stumbling blocks to the success of such programs.

Problems Existing within the Penal System (Corrections)

There are numerous specific problems within the penal system which should be studied by those debating or discussing the system. Our purpose in this section is to suggest specific problem areas that exist and to cite to a small degree evidence that these problems do exist. This material and analysis gleaned from the reading and experience of the author should merely be the starting point for much deeper research by each debater and discussant.

Overcrowding

The first problem worthy of consideration is overcrowding. Studies of jail populations reveal that rural jails are free from this problem, while areas of dense population tend to vary considerably. The National Jail Census of 1970 found that 5 percent of the jails were overcrowded and that the larger the jails the more likely they were to be overcrowded, since they tended to be in metropolitan areas. In the spring of 1971 the District of Columbia jail was housing 1100 inmates in a facility designed to hold 550.[6] James Hoffa, while serving his sentence at the Lewisburg federal penitentiary in Pennsylvania, made a study of conditions in the federal prisons and reported his findings to the Senate Subcommittee on Penitentiaries.[7] Among the findings was evidence of overcrowding at a number of prisons:

U.S. Penitentiary at Springfield, Illinois—capacity 2100, present population 2203
Leavenworth, Kansas—capacity 2100, present population 2247
Lewisburg, Pennsylvania—capacity 1675, present population 1794
McNeil Island, Washington—capacity 1000, present population 1310
Terre Haute, Indiana—capacity 1200, present population 1355

Antiquated Facilities

A second problem worthy of further research is the old and antiquated nature of many jails and prisons. The National Advisory Commission on Criminal Justice Standards and Goals in one of their six reports, entitled *A National Strategy to Reduce Crime*, describes them:

> The conditions in local jails often are far worse than those in state prisons. Local jails are old—the national jail census made for the Law Enforcement Assistance Administration in 1970 showed that one out of every four cells was more than 50 years old and some were more than 100 years old. Many do not meet rudimentary requirements of sanitation—50 jails had no flush toilets and investigations in many institutions have revealed filthy cells, bedding and food. . . . Only half of the jails had any medical facilities.[8]

The State of Vermont finally closed down its only maximum security prison during the summer of 1975. It had opened for business the year Abraham Lincoln was born. Its dungeonlike cells, almost completely encased with bricks except for a small iron barred door, were finally abandoned for much improved community correctional centers. This progress was very slow in coming.

Effects of Long Sentences

A third problem arises from the effects of unnecessarily long sentences. There are many prisoners incarcerated who would be better off out of jail—some studies suggest that the figure is as high as 80 percent. Long sentences often prove counter-productive. The early months behind bars with freedom denied is a shocking experience to the first time offender. The effects of this experience are drastic. With the passage of months, adjustment to the prison environment is made; as the months drag on into years, friends on the outside decrease and friends in the prison may become the only ones left. The result is that recidivism rates tend to increase with the longer periods of incarceration. Incidents following two particular Supreme Court decisions are often cited to support this.

When the Supreme Court decided in the Gideon case that a lawyer must be present while a suspect is being interrogated by the police and in the Miranda case that immediately upon arresting a suspect the police must state the right of the individual to remain silent in order to avoid self-incrimination, thousands of prisoners throughout the nation were released. In the neighborhood of 1000 prisoners were freed in Florida. There were great fears that there would be a sudden flurry of criminal acts. Later a study was made of those released only to find that their recidivism rate was lower than that of those who were retained in prison. The same thing happened in the state of Georgia.

Prisoners who are likely to commit crimes of violence must be given longer sentences in order to protect society. Long sentences for those who commit crimes against property either are of no help or are actually counter-productive. Furthermore, they only increase the cost to the taxpaying citizen—$11,000 per year to keep them in jail versus $365 to place them on probation or parole.

Depersonalization

A fourth area of complaint is depersonalization as a result of the size of the prison. The task force for the National Advisory Commission on Criminal Justice Standards and Goals describes this effectively:

> Separation of large numbers of people from society and mass confinement have produced a management problem of staggering dimensions. The tensions and frustrations inherent in imprisonment are magnified by the herding together of troubled people. Merely "keeping the lid on" has to be the real operational goal. The ideal of reform or rehabilitation has succumbed to that of sheer containment, a goal of limited benefit to society.[9]

These large prisons or penitentiaries depersonalize the inmates, who often feel that they got lost among the crowds. Informal counselling becomes difficult; privacy is extremely difficult to achieve. Inmates become numbers identified by

the cell they occupy. As one of the Vermont prisoners said in an interview with the author at the Petersburg federal prison, "It was much better back home in our community correction centers; we at least could make friends with the guards."[10]

Mixing of Prisoners

A fifth difficulty is the mixing of juveniles with older prisoners, first offenders with hardened criminals, the unconvicted with the convicted which results from the lack of facilities. In many of our jails those awaiting trial, as yet not convicted, constitute 60 percent of the population and are not kept segregated from those who have been convicted. With long delays awaiting trial, such jails can often become excellent training schools for crime for the young and susceptible. The task force for the National Advisory Commission on Criminal Justice Standards and Goals describes the situation:

> Sentenced offenders are generally classified by degrees of dangerousness, age, vulnerability to assault, illness, and ability to reform. Persons awaiting trial are generally classified in one class, under the rationale that they are all presumed innocent and no information base is available for distinguishing one detainee from another. The result is that young persons are detained with alcoholics, petty offenders with drug addicts, innocent persons with hardened criminals."[11]

The Goals of Corrections

A sixth problem arises from the differences of opinion as to the goals of corrections, an area of concern which was discussed in the preceding section. It is expensive to build large prisons only to tear them down or to develop community centers only to spend more tax money to convert them to other uses. Developing new training programs only to abandon them results in confusion. It is difficult to develop continuity when every four years a new administration with a different philosophy enters the picture. Few studies have been made to quantify this problem and it may not be too serious. The typical politician's attitude is that prison reform won't win very many votes; after all, felons are denied the right to vote. James F. Smith, a lawyer with the Sacramento Legal Aid Society comments,

> Legislators are often much more concerned with their public image than with their substantive legislative accomplishments. With a hot political issue like prison reform, the legislature, like most political bodies, is skillful at appearing concerned and dedicated to resolving the problem, while at the same time endlessly delaying any meaningful change that might be controversial.[12]

Inhumane Treatment of Prisoners

A seventh area of possible need for reform lies in the inhumane treatment of prisoners that seems to be present in many prisons. Upon entering prison, the freedom of the streets, with its accompanying freedom of choice, must give way to the authoritarian control of the prison. The inmates are told what to do, where to be, and when to do most of the things that occupy their time through

each day. The inhumanity within prisons arises from the emphasis placed upon punishment by those who are assigned the tasks of carrying it out.

William Nagel and his staff from the American Foundation's Institute of Corrections visited over 100 correctional institutions throughout the nation. Nagel describes several cases of inhumane treatment:

> In one institution at the time of our survey, nearly 18 percent of the inmate population was in some kind of segregation—19 in isolation, 65 in segregation, and an additional 35 in a disciplinary quarantine, flatteringly called the "halfway house." The isolation was especially brutal. As many as eight people have been locked into one of the tiny, dark, airless, and bedless isolation cells for up to 21 days. During our visit these gloomy, bare dungeons contained two, three, and four men sitting naked on the floors. Only the 5-inch holes in the floors, used as toilets, served any human purpose.[13]

James Hoffa describes in detail the experiences he had in the federal penitentiary at Lewisburg, Pennsylvania, and says of the guards,

> Guards . . . are there as ordinary working men accepting their assignment and drawing their paycheck and waiting for pensions. Fifteen percent of the guards cause 100 percent of the trouble. Five percent of the guards are completely sadistic and should never be near a human being because they deliberately create incidents of violence, mistreat prisoners, abuse prisoners, and yet the 85 percent bear the brunt of the 5 percent.[14]

There is an abundance of written testimony concerning the inhumane treatment of prisoners. The most impressive comes from the descriptions of those who have been in prison. Nathan Leopold, a convicted murderer as a youth and now a respected worker in corrections, describes and analyzes the effects of prison life on prisoners in *The Tasks of Penology*.[15] Eddie M. Harrison, director of the Pretrial Intervention Project in Baltimore, Maryland, has cited his own experiences in prison to illustrate why prisons fail to achieve their goals.[16] Many vivid descriptions by the prisoners at the Correctional Training Facility at Soledad and at San Quentin in California reveal the inhumane treatment that may occur throughout the steps of the correctional process.[17] Debaters advocating reform in this area will have plenty of evidence available. However, they may be reminded by their opponents that this may be true of some but not necessarily of all institutions.

Programing

The eighth problem is in the programing of the inmates. The housekeeping of the prison, that is, the cleaning, cooking, dishwashing, and other maintenance activities, is done by the inmates, but this is far from enough to help them escape boredom. Programs are instituted in the hope that the prisoner may become rehabilitated and more easily reintegrated into the community, but because of lack of funds, lack of personnel, and lack of facilities, these programs have many inadequacies. Many jails throughout the country have none at all. People awaiting trial or sentencing cannot usually be programed—the length of their stay is too unpredictable.

Federal and state prisons, for the most part, do their best. Significant numbers of prisons, particularly federal, have impressive facilities to teach masonry, carpentry, auto and general mechanics, electronics, and even computer operation. Some have even established classrooms at the various levels and teach the inmates according to their needs. However, with a population in the prisons almost as varied in interests and needs as the general population, it is difficult to match the program to the inmate. For this reason, results of programs aimed at rehabilitation, such as individual counselling, group counselling, and drug and alcoholic rehabilitation, are frequently discouraging. The adage, "coerced rehabilitation brings no rehabilitation," is quite well known by most prison administrators and case workers. Nor is the long run effect of rehabilitation programs very meaningful, when interest is shown by prisoners only so they can become paroled sooner. Debaters will find a great deal of testimony in the literature to evidence this problem.

Recidivism

A ninth problem within the corrections system is that caused by recidivists. The profiles of these repeaters differ greatly. Some, like those committing larceny, are imprisoned, serve short sentences, and are released, only to commit another crime and return to prison with a similar or a bit longer sentence.

The "small-time operator" living a rather continuous life of crime has the profile of committing numerous types of crimes. This repeated offender's conviction record will have two or three arrests for driving with a suspended license, a couple of arrests for driving while intoxicated, an arrest for driving a car without the owner's consent, two or more breaking and entering charges, and a number of petty larceny offenses.[18] This profile is typical of prisoners whose "social history" reveals such things as parental rejection, family alcoholism, failure in school, no vocational training, and unemployment (a number of studies have revealed that crime increases as unemployment grows). Many are alcoholics themselves. Somewhere between 35 and 50 percent of the cases coming before the Vermont Parole Board are of this type. Rudolph Morse, who has spent 35 years of his life as a parole and probation officer, superintendent of a prison, director of probation and parole for the state, and parole board member, estimates that 75 to 85 percent of the crimes committed in Vermont are done while under the influence of alcohol. Of these people Morse says, "They can't be rehabilitated because they were never habilitated in the first place."[19]

Another group of prisoners includes those individuals who are serving the longer prison sentences attached to the more serious crimes against people. Rehabilitation problems are amplified when these individuals are serving life sentences or are recidivists. These are the prisoners who become the "hardened criminals," the ones who have lost hope for themselves, and for whom prison officials may have given up hope of providing any help.

Both groups are extremely difficult to program. Certainly, being coerced into participation will not help prisoners who are unmotivated. Whatever programs of reform are adopted, they for the most part will not be able to compensate

for parental rejection, early school failures, and widespread unemployment. Furthermore, counsellors are generally not successful in their attempts to raise the moral standards of these prisoners.

To some extent, prisoners' attitudes may not be without just cause. Many have been subjected to inhumane treatment and have suffered real or imagined injustices arising from wide disparities in their arrest, prosecution, and sentencing. Others have been denied access to vocational education because of legislative denials to felons to work in various occupations. These experiences counter the best of arguments and other persuasive techniques to instill belief in the so-called high moral standards of society. The inevitable result for many prisoners is hostility toward the institution and toward society. These disheartened inmates may knowingly or unknowingly become advocates of "living a life of crime."

Quality of Probation and Parole Officers

Tenth, the success of probation and parole is overwhelmingly dependent upon the officers engaged in that work. Superior officers are the greatest hope; the use of inferior officers can only produce ineffectiveness or complete failure. The barrier that is cited most frequently is the size of the case load. The optimum size is about 35, yet many officers have loads that exceed 100 cases. A survey taken some time ago revealed that 67 percent had case loads exceeding 100, 29.9 percent had loads of from 50 to 100 cases, and only 3.1 percent had less than 50 cases.[20]

Other weaknesses also exist. The program of recruitment of personnel, the few courses of education and training for the profession, and the lack of salaries high enough to attract high quality persons are some of them. The superior parole or probation officer tries to encourage the probationer or parolee to make the best decisions possible for his or her life. These include where to live, what vocation to follow, and decisions about family life. When a parole board paroles a prisoner "to an acceptable plan," this plan must be worked out with and approved by the parole officer. It often takes a great deal of delicacy upon the part of the parole officer to lead a parolee to move away from the environment that was originally responsible for the parolee's turning to crime. The parole officer is responsible for counselling a parolee on such matters as whether to marry or divorce, what occupation to choose, and where to establish a home and also has the power to override such decisions. The officer is particularly responsible for seeing that the parolee lives up to the general and any special conditions that have been assigned by the parole board.

Needless to say, parole and probation officers can have a lot of influence on whether the individual reintegrates successfully into society or turns again to crime. Poor guidance given by an emotional or untrained parole officer can lead to serious disparities and injustice.

Criticisms of Parole Boards

The last problem we shall consider is the controversy over parole boards. Some people object to parole board decisions on the grounds that they are arbi-

trary and unpredictable. In some jurisdictions the load is heavy enough that only two members sit in on the hearings. Other critics point to the weaknesses arising from the method of appointment—governors appointing members to reward them for good service to the party is frequently noted—and the lack of standards in determining qualifications. Others point out that in many states there is not enough demand for full-time work, while in others there is too great a load for individuals to both work at other jobs and live up to their parole board obligations.

Statistical studies are not available to measure the success or failure of parole boards. Maine and Illinois have discontinued the use of parole boards, while U.S. Attorney General Edward Levi has advocated flat sentences to be set by judges and the discontinuance of the federal parole system:

> It may be time to consider an even more sweeping restructuring of the sentencing system, which United States District Court Judge Marvin E. Frankel calls the most critical part of the criminal justice system. There have been proposals to abolish the federal parole system as it now exists and to allow trial judges to determine the precise sentence an offender would be required to serve. The trial judge would operate within a set of sentencing guidelines fashioned by a permanent Federal Sentencing Commission.[21]

Solutions-Reforms

In the previous section we observed the many problems within our penal system. A systematic research of the various studies made and the literature in the field can reveal how serious these problems are. Now let us turn our attention to the solutions. Probably in no area of human study have there been so many minds attempting to find the answers. Because the problems are so serious and because there are so many differing parts to our criminal system, it is inevitable that proposed suggestions for reform will be complex and numerous. Debating and discussing this topic over a period of months should bring a variety of proposals with differing combinations. This in itself will introduce one more dilemma into a world already full of dilemmas—namely, how one can choose a program or programs of reform that will be not only "comprehensive" but also narrow enough to be discussed in the time allotted for a single debate.

Fortunate indeed is the debater or discussant who can make use of the 636-page volume entitled *Corrections*, which was compiled by a task force and published under the direction of the National Advisory Commission on Criminal Justice Standards and Goals.[22] The task force put together an outline of 129 standards, each with a multiplicity of guidelines subordinate to it. These constitute already formulated directives essential to the establishment of the best legislation and methods for operation of all parts of the criminal justice system, and particularly for "corrections." In this volume will be found guidelines for the establishment of whatever "Comprehensive Program of Reform of Our Penal System" the debater or discussant chooses.

Reforms in other areas of our criminal justice system are discussed and outlined in detail by task forces of the National Advisory Commission on Criminal

Justice Standards and Goals in four additional volumes, *Police, Courts, Criminal Justice System*, and *Community Crime Prevention*. Fortunately, these volumes, along with *Corrections*, were screened, and the most urgent and highly approved recommendations were abridged into *A National Strategy to Reduce Crime*.[23] This should be a top priority book for all discussing or debating criminal justice reform.

Various other groups have done monumental work in penal and criminal justice reform. Unusually detailed, with guidelines at every step in the criminal process, is the *Compendium of Model Correctional Legislation and Standards*, second edition,[24] produced by a variety of task forces within the American Bar Association. The National Sheriffs' Association has set up guidelines for reforming jails,[25] and numerous other groups have been engaged in similar efforts. The description of the various reforms, guidelines for their use, and evaluations of their worth are available for the debater and discussant.

To debate penal reform, one must have a working definition of the word *rehabilitation*. As used among scholars and those working in the field, the term is very ambiguous. There is an even greater difference of opinion on how to evaluate the programs intended to achieve it. The author, who has spent more than forty years studying and teaching attitudes and how to change them and who is now participating in the criminal justice field, was impressed with the following words of Norman A. Carlson, Director of the Federal Bureau of Prisons:

> Each man and woman has a different set of needs to help him or her make the decision to give up criminal activity and to take a respected place inside rather than outside the law. To protect our society against crime, we must have a highly efficient criminal justice system that apprehends the offender, brings him speedily to trial, metes out a just sentence to the guilty, and gives him encouragement to change his life style.[26]

From the above we can derive a good, working definition: *Rehabilitation of a criminal is the process of helping him or her make the decision to give up criminal activity and to take a respected place inside rather than outside the law.* In other words, criminals can be said to be rehabilitated when, despite anger, frustration, drugs, or alcohol, their attitudes and beliefs are strong enough to keep them from turning to crime. Corrections programs which encourage this change of attitude or provide the environment favorable for that change are the goal of our penal system.

Another term that will become a part of debates and discussions on penal reform will be the word *mandate*. Certain things carrying legislative or executive weight can be mandated with expectations that they will come about. When the Supreme Court mandated that an accused person is to have an opportunity to be represented by a lawyer, it was carried out. On the other hand, no one yet has found a way to mandate human attitudes and beliefs; there is only persuasion. We still can't mandate greater public participation in community corrections programs; we cannot mandate legislators to double their appropriations for our favorite reform program. In fact, if we could mandate human beliefs

and attitudes, then we could mandate human behavior and thus mandate crime out of existence. Because we must depend on persuasion, reforms aimed at reducing the crime rate or recidivism will have to be evaluated in terms of their power to persuade individuals to "give up criminal activity and to take a respected place inside rather than outside the law."

The remainder of this chapter will be devoted to a discussion of the various penal reforms which have been proposed—their backgrounds, advantages, and disadvantages. These reforms will not correspond directly with the problems which have been discussed, but readers will readily see the effects the various reforms would have on the existing problems.

Community Correctional Centers

One of the foremost comprehensive programs of reform is the substitution of smaller community correctional centers for large prisons. The centers differ widely in size and architecture. Their most significant features are that they are located within city limits, they tend to be distinctly smaller in size than prisons, and they make extensive use of community schools, mental health clinics, drug and alcoholic treatment centers, and local business establishments and factories for vocational training.

> Men who have been defined as felons work, play, worship, study, and perform a variety of other activities in the community. In sequence they receive day passes, then weekend passes, then brief furloughs, and finally renewable furloughs, during which time they live at home with their relatives and loved ones. All this before parole. In Vermont, the locale for much of the period under sentence has moved from the central prison to the community correctional center, and hence to the community itself.[27]

Advantages. Certain advantages can be advanced for the adoption of a program utilizing community correctional centers:

1. The smaller size reduces the probability of inhumane treatment.
2. These centers reduce the impersonal nature—don't get lost in the crowds; "can make friends with the guards."
3. These centers make increased use of community facilities. A large prison several miles out in a rural district has little chance to do this.
4. Day passes and furloughs for work release are more available.
5. Visits by families are greatly expedited.
6. Married male inmates can earn family support money instead of depending on social welfare. Extended work furloughs often make complete support of the family possible.
7. Money saved by utilizing community services and inmate work release can be diverted to strengthening prison programs and personnel.
8. Reintegration of the inmate into the community is easier because of the use of a gradual rather than a sudden dismissal from prison.

Disadvantages. Since both the federal government and some states have made use of this type of program, there is considerable evidence in criminal reform

literature to evaluate these programs. Despite the alleged advantages, various writers in the field point to certain weaknesses:

1. Community centers are unsafe for use with high security risk criminals such as murderers, rapists, and arsonists Furthermore, there can be no certainty that a person convicted of a crime against property won't turn to a crime of violence.
2. Fear is present among those members of the community living close to the correctional center. Should a particularly vicious crime be committed by one of the inmates on pass or furlough, the consequences could be serious.
3. The deterrence value of incarceration may be significantly decreased. A daytime pass for work or to look for work and a chance to come back at night to living conditions and food that are as good or frequently better than that to which they had been accustomed will not be a strong deterrent. Since the poor constitute such a great portion of those committing crimes, this factor may be quite significant.
4. Property values of residences and business establishments in the vicinity of the correctional center may suffer a continued depression. Not too many people would be stimulated to buy in the area.
5. Large maximum security prisons for hardened criminals, murderers, rapists, arsonists, and those convicted of aggravated assault and armed robbery will still be needed.
6. As was noted earlier, recidivism rates have not necessarily been lowered; as yet, there is no guarantee that they will be under widespread use of community correctional centers.
7. There is no guarantee that community correctional centers will decrease taxpayer costs. If money is saved in some aspects of corrections, it will only be diverted to other areas.
8. The cost of building the new centers on the high priced land within the city and tearing down many of the old large prisons would be formidable.

The above arguments both pro and con are discussed in the literature and need research in depth to be developed fully. They should give direction for further exploration.

More Efficient Use of Available Resources

A second possible area of reform is a distinct increase in the use of community services, work release passes, and furloughs as well as educational and vocational training. This would involve continued use of the present criminal institutions and would eliminate the costly burden of building new and tearing down old facilities. The argument here is that workable programs exist but remain insufficiently used. Programs sponsored by public education and government grants to private organizations, secondary schools, colleges, and vocational schools could stimulate increased use of these resources. Such efforts would help to humanize the lives of prisoners, increase the variety of programing avail-

able, make it more likely that individual needs would be met, and ease the process of reintegration into the community. On the other hand, many of the arguments raised against the community correctional center apply to this program. In addition, in debating this reform the negative can counter by suggesting (with evidence and argument) that this program has been adopted or is being adopted as rapidly as is feasible.

Diversion

The third area of possible reform is called diversion. This is a relatively new type of procedure which has been used in a limited way during the past decade. It is utilized prior to the prosecution and trial steps, but it has a great influence on the corrections phase. Whenever it is used successfully, the individual avoids prosecution, trial, and incarceration. In those jurisdictions where diversion is available, arrested individuals are screened by the prosecutor, the arresting officer, and usually an officer of the court. A lawyer for the suspect is a requirement since the Gideon case. If the members of the screening group agree that the person is a first offender, constitutes a minimum risk to the community, and can profit from the available programs, he or she is offered the opportunity of diversion. A person who accepts the offer must affirm that he or she will complete the program and do so satisfactorily. Failure to do so means that the person must return to the usual criminal procedural steps of trial and must, upon conviction, take the penalty or sentence assessed. The three major thrusts of the programs offered under diversion are individual counseling, career development, and group counseling.[28]

Advantages. The goals of diversion, if achievable, become its advantages.

1. Its costs are less than prosecution, trial, and incarceration.
2. Its programs are aimed directly at rehabilitation.
3. It avoids the inhumane treatment of prisons which is often a barrier to rehabilitation.
4. It separates the first offender from hardened criminals who may be "the teachers of crime."
5. The problems of the drug addict and the alcoholic can get immediate attention.
6. People who participate in the program can avoid the acquiring of a criminal record that may become a barrier to future employment.
7. It can relieve congested court calendars and the overcrowding in jails and prisons.

Disadvantages. The objections or disadvantages to diversion are significant.

1. The deterrent effect of the criminal system may be significantly weakened. It is far from the "get tough" policy.
2. It is such a distinct change that it would cost a lot of money to provide the facilities and trained manpower to carry the programs out.
3. Those failing to complete the programs successfully would be placed in double jeopardy upon returning to the usual procedure of trial and sen-

tencing. They would have served a pre-trial period of probation followed by a post-trial period of either probation or incarceration. Pre-trial diversion followed by a sentence of merely a fine would at best be infrequent.

4. Grave injustices could readily arise for those who may have trouble getting along with their assigned case worker. The criteria for probation or parole violation would not be very applicable.
5. Adept "con-men" could ride their way through the system with no particular value received from the program or programs.
6. The value of the program in reducing recidivism could hardly be determined, since the people chosen to participate would be of the type that were the most unlikely to be repeated offenders.

Decriminalization of Victimless Crimes

A fourth area of proposed reform, one which has many supporters, is the decriminalization of victimless crimes (a list of the crimes and the number of arrests for 1974 appears earlier in this section). The process of decriminalization would probably involve the setting up of programs to deal with the various offenses. In some cases it would mean repealing entirely the laws making them criminal acts. This would probably include intoxication, adultery, homosexuality, vagrancy, prostitution, gambling, possession and use of marijuana, and disorderly conduct. Possession and use of stronger drugs would be handled through diversion. This might also be the route for repeated public intoxication. "Pushers" of drugs and marijuana would be treated in the same fashion that bootleggers of alcohol are. Activities of organized crime in the field of prostitution would probably continue to be outlawed. These latter activities victimize others and thus would continue to be considered as crimes.

Advantages. The arguments and issues in debating decriminalization of victimless crimes, to be relevant, should deal with their effects upon the criminal justice system, particularly on corrections. Whether we should try to legislate moral codes upon all citizens is dominant in the discussion. Decriminalization, it might be argued, could

1. Reduce the burdens of policemen significantly.
2. Reduce the burdens of prosecutors.
3. Help relieve the congestion of our courts.
4. Relieve our crowded prisons and jails.
5. Remove the stigma of being a criminal for such minor infractions as having marijuana in your dormitory room or bedroom at home.
6. Restore respect and dignity to the law and law enforcement personnel. Many people do not believe in these laws, many violate them, and the police find it impossible to detect violations or are too busy to act upon them. For example, annual *Uniform Crime Reports* reveal that more than 24 million persons have tried marijuana, and yet the arrest rate is about 450,000 per year. From the *Sourcebook of Criminal Justice Statistics* we find that 30 percent of juniors and seniors in high school have tried

marijuana, if they were given a chance. The same source reveals that 39 percent of those between the ages of 18 and 25 tried it when given the chance. Only 25 percent of those giving up its use did so because of fear of the law.[29]

Disadvantages. Representative of the arguments against decriminalization are the following:

1. It will encourage the committing of these acts.
2. Those intoxicated can't be left to "sleep it off" in the streets.
3. Youthful runaways (vagrants) can't be left to starve.
4. The advance of organized crime in gambling and prostitution will be encouraged.
5. Widespread use of marijuana and drugs will increase the problem of pushers.
6. Since large numbers of drug and marijuana users are getting only fines, decriminalization will give little relief to the crowded conditions of our jails and prisons.

Mandatory Sentences

A fifth area of reform that will have strong effects on the penal system is that advocated by Attorney General Edward Levi: substituting a flat, mandatory sentence for the present indeterminate sentence with the eventual abolishment of parole and perhaps even probation. Today judges assign such sentences as zero to five years or two to five years, leaving it up to the prison officials and the parole board to decide when the prisoner can be paroled and placed under the supervision of a parole officer.

Advantages. A mandatory sentence could mean that suspended sentences as well as probation would be discontinued. Those persons who believe in "getting tough" and those who disapprove of arbitrary decision making are the chief supporters of this change. Some of the arguments they advance are:

1. Punishment of those convicted would be certain.
2. Variances that lead to injustices would be reduced or prohibited entirely.
3. Differences between lenient and stricter judges would be eliminated; arbitrary decision making would be reduced.
4. Deterrence of the criminal justice system would be substantially enhanced.

Disadvantages. Those who oppose this reform offer such arguments as the following:

1. It would disallow giving a lighter or heavier sentence for the seriousness of the crime. There is quite a difference between a victim who sustains a bloody nose in an assault case and one who is sent to the hospital with a broken jaw.
2. It would reduce the motivation of the convicted to improve their education or personality development while in prison. Such things would not count toward release.

3. Disruptive prison behavior might be augmented, since only conviction for a new crime committed within the prison walls would lengthen prisoners' sentences.
4. It would result in keeping some prisoners incarcerated unnecessarily long, while others would be released too quickly.
5. Arbitrary decision making would not be reduced; it would only be shifted to the prosecutor who arbitrarily decides the charge for which the accused will be prosecuted. The danger is that the prosecutor may be more interested in his or her record of convictions than in either justice or determining what is best for the development or the rehabilitation of the accused.

The Nature of the Prison Experience

A sixth area is chiefly a reform in prison architecture but includes considerably more. This reform would keep out of prison all persons possible through diversion, decriminalization of victimless crimes, and probation. The optimum size of the prisons left would be from 150 to 250 inmates and would chiefly house the high risk offenders—murderers, rapists, arsonists, and those convicted of aggravated assault (those who used a weapon in their assault). To the extent that incarceration was necessary for the rest, the buildings should resemble residences or college campuses. The federal reformatory at Alderson, West Virginia, and the Robert Kennedy Youth Center near Morgantown, West Virginia, are cited as models for this. William G. Nagel describes the need for this change:

> Other serious investigators—Sykes, Goffman, Cloward, Schrag—have noted that prison subcultures work powerfully to subvert even the most conscientious of treatment efforts. Gaylin, Weber, and others have noted another phenomenon that contributes to the failure of the prison and of many institutions for youth. When in these places, large numbers of human beings are placed in a closed society in which many have to be controlled by a few officials. This creates special counter-productive pressures.
>
> In the outside society, unity and a sense of community contribute to personal growth. In the society of prisoners, unity and community must be discouraged lest the many overwhelm the few. In the world outside, leadership is an ultimate virtue. In the world inside, leadership must be identified, isolated, and blunted. In the competitiveness of everyday living, assertiveness is a characteristic to be encouraged. In the reality of the prison, assertiveness is equated with aggression, and repressed. Other qualities considered good on the outside—self-confidence, pride, individuality—are eroded by the prison experience into self-doubts, obsequiousness, and lethargy. In short, individuality is obliterated and the spirit of man is broken in the spiritlessness of obedience.[30]

Advantages. The advantages which might be argued are:

1. Prisons now built to serve the public would be replaced by those which would serve the needs of the prisoner.
2. The depressive features of the old impersonal prison structures would be replaced by more modern and attractive buildings.

3. The smaller size makes possible the emphasis of those traits desirable on the outside—pride, aggressiveness, and leadership.
4. The smaller size can reduce the danger of riots by inmates.
5. Programing for rehabilitation will take place within an encouraging atmosphere.

Disadvantages. The disadvantages or obstacles to the adoption of this reform are:

1. The rebuilding of so many of the 4394 (1970 figures) jails and prisons into this model would cost many billions of dollars and take many years to achieve.
2. Attractive jails and prisons reduce their deterrent effect.
3. The public would be exposed to greater risks of criminal activity; the person committing a crime against property today may commit a crime of violence tomorrow.
4. Reduced size of institutions may readily reduce the variety of programing.
5. More prisons would mean more expensive operations (more upper echelon administrators, less bulk purchasing of supplies, etc.).
6. No evidence from studies available guarantees a reduction of recidivism.

Prisoners' Rights and Grievances

The last proposed reform to be discussed here is in the area of prisoners' rights and grievances. A great deal of effort by various groups has been made in this area. The American Law Institute in 1962, the National Council on Crime and Delinquency in 1972, the National Advisory Commission on Criminal Justice Standards and Goals in 1973, and the National Sheriffs' Association in 1974 have all devised codes and standards that should be followed in this area. Unfortunately, the efforts of Congress, state legislatures, and leading administrators in the various areas of our criminal justice system to study and implement these codes have been minimal. The American Bar Association, which has combined the above codes and its own set of standards into *A Compendium of Model Correctional Legislation and Standards*, is making strong efforts in this direction. These efforts deserve the greatest possible support by the public.

Since many of the leading minds in the criminal justice field have agreed upon these codes, little profit would come from debating them. Furthermore, they are so numerous that little meaningful discussion could take place in the time available for a debate or discussion. A discussion group might profit from the discussion of how to implement the codes in their areas.

Ombudsman. One of the reforms in this area has been the introduction of the use of an ombudsman within the penal system. This person, trained and experienced in the field of interpersonal human relations, is hired to listen to, explore, and try to alleviate grievances, deficiencies, and injustices. Unlike the public defender, this person's duties go far beyond the protection of the legal rights of the inmate. They include dealing with complaints about poor food, bad physical facilities, cruel or inhumane treatment, poor or inadequate programing, and family visitation rights. This position is established in such a way

as to be completely free of control of the corrections administrators; on the other hand, the ombudsman is not chosen as the public defender, to represent the prisoners. Ideally, the ombudsman's duties are to serve as an impartial mediator protecting the rights of the prisoners, the corrections personnel, and the public. He or she is to protect the prisoners from inhumane treatment and inadequate programing and the corrections personnel from the growth of many small grievances into riots or from false accusations.

Theoretically the goals to be achieved are praiseworthy, but to find people who are willing to serve in this capacity, who have the training for it, and who are able to retain the objectivity necessary is difficult.

Barriers to employment. A second possible area of reform to assist in establishing the rights of convicted felons would deal with barriers to employment. These barriers arise against successful reintegration into the community and are beyond the control of corrections officials. The first of these barriers is the result of licensing requirements enacted into law by state legislatures. In some cases ex-convicts are directly mentioned; more often, they are caught by the requirement that licensees must be "of good moral character." Thus, ex-convicts can be prohibited from becoming a barber, a beauty operator, a plumber, a lawyer, or a doctor.

A second barrier to employment results from personnel policies for hiring. Throughout all areas of society employment is denied to those who have served terms in prison. Various federal government agencies have been noteworthy in this type of discrimination. The army, the navy, and the marines still exclude ex-convicts. In some areas the ex-convict is denied the right to vote and to run for elected office. With the high correlation between the amount of unemployment and the increase in recidivism, it seems inevitable that the best of rehabilitation programing possible within prison walls will fail to achieve its ultimate goal of reintegrating the ex-convict into society.

To those debaters called upon to argue against the above barriers, the best approach would be discussion of the great barriers to the feasibility of implementation. The federal government, the fifty state governments, and local governments, along with the thousands of business, industrial, educational, and other institutions, are the only ones that ultimately can bring significant change. Educational and legislative programs may at best bring only minimal improvement, if any.

The foregoing are some of the areas of reform most prominently mentioned in the literature. Other areas can be explored with profit. In the above discussion the author has only named the premises or arguments for and against these reforms. *They do not become arguments until completely developed.* The debater must take each argument and (1) *word it* into a good reason for believing, (2) *explain* why it is believable and important, (3) *evidence* its believeableness and importance, and (4) *conclude it.*

NOTES

1. See *Marshalling Citizen Power against Crime* (Washington, D.C.: Urban Affairs Division of the U.S. Chamber of Commerce, 1970), pp. 74, 85; and *A Call for Citizen Action*, National Advisory Commission on Criminal Justice Standards and Goals (Washington, D.C.: Government Printing Office, 1974).
2. *Crime in the United States—Uniform Crime Reports for 1974* (Washington, D.C.: Federal Bureau of Investigation, 1975), p. 179.
3. Robert Martinson, "What Works—Questions and Answers about Prison Reform," *The Public Interest* 35 (Spring 1974): 25.
4. *Compendium of Model Correctional Legislation and Standards*, 2nd ed., Law Enforcement Assistance Administration of the U.S. Department of Justice (Washington, D.C.: Government Printing Office, 1975).
5. *Speedy Trial*, Hearing before the Subcommittee on Constitutional Rights of the Committee of the Judiciary, United States Senate (93rd Congress, First Session, April 17, 1973), p. 1.
6. *Corrections*, National Advisory Commission on Criminal Justice Standards and Goals (Washington, D.C.: Government Printing Office, 1973), p. 275.
7. James Hoffa, from a report contained in *Oversight Hearings on the Nature and Effectiveness of the Rehabilitation Programs of the U.S. Bureau of Prisons*, before the Senate Committee on the Judiciary, June 13, 1972, p. 3.
8. *A National Strategy to Reduce Crime*, National Advisory Commission on Criminal Justice Standards and Goals (Washington, D.C.: Government Printing Office, 1973), p. 122.
9. *Corrections*, op. cit., p. 355.
10. An interview held on February 2, 1976, at Petersburg, Virginia. Vermont has community correctional centers. The few high risk criminals are sent to federal institutions under a compact with the Federal Bureau of Prisons. At the moment there are only about 20 of these convicts.
11. *Corrections*, op. cit., p. 105.
12. James F. Smith, "Prison Reform through the Legislature," in *The Politics of Punishment*, ed. Erik Olin Wright (New York: Harper & Row, 1973), p. 278.
13. William G. Nagel, *The New Red Barn*, sponsored by the American Foundation Institute of Corrections (New York: Walker & Company, 1973), p. 82.
14. Hearings before the Senate Subcommittee on National Penitentiaries on June 13, 1972, p. 13.
15. Nathan Leopold, "What Is Wrong with the Prison System?" in *The Tasks of Penology*, eds. Harvey S. Perlman and Thomas B. Allington (Lincoln: University of Nebraska Press, 1969), p. 21-46.
16. Eddie M. Harrison, "Inside Looking Out," in *We Hold These Truths: Proceedings of the National Conference on Corrections* (Williamsburg, Virginia: National Conference on Corrections, Law Enforcement Assistance Administration, 1971).

17. Robert J. Minton, Jr., ed., *Inside Prison American Style* (New York: Random House, 1971), pp. 3-200.
18. As parole officer, the author has observed a significant number of such records, with the number of arrests running as high as 15 to 20 and in one case 28.
19. Mr. Morse has made this remark at a number of Parole Board meetings. The Vermont Board meets six times a month, once each at the four community correctional centers and the two residential treatment centers. Between twenty and thirty inmates come up for parole each month. The cases of all inmates are reviewed every six months, even before they are eligible for parole, to make sure their needs are being given proper consideration by the institution.
20. Michael J. Hindelang, Christopher S. Dunn, Alison L. Aumick, and L. Paul Sutton, *Sourcebook of Criminal Justice Statistics—1974* (Albany, New York: Criminal Justice Research Center, 1975), p. 428.
21. Edward H. Levi, Attorney General of the United States, at the Governor's Conference on Employment and the Prevention of Crime. A copy of the speech was given to the author at the Department of Justice offices, Washington, D.C., 1976.
22. *Corrections*, op. cit.
23. *A National Strategy to Reduce Crime*, op. cit.
24. *Compendium of Model Correctional Legislation and Standards*, op. cit.
25. *Guidelines for Jail Operations* (Washington, D.C.: National Sheriffs' Association, 1972).
26. Norman A. Carlson, "The Federal Prison System: Forty-Five Years of Change," *Federal Probation* (June 1975). (A reprint from the Washington Office.)
27. William G. Nagel, op cit. p. 169.
28. Joan Mullen, *The Dilemma of Diversion* (Washington, D.C.: National Institute of Law Enforcement, 1975), p. 79. (This publication is an excellent discussion of diversion; it describes attempts to use this procedure and objectively evaluates it.)
29. *Sourcebook of Criminal Justice Statistics—1974*, op. cit., pp. 227-232. See also annual editions of *Uniform Crime Reports*.
30. William G. Nagel, op. cit., p. 139.

Lack of Uniform Codes

Discussion: What reforms in the criminal justice process can provide a more equitable system of justice for all United States citizens?

Debate: Resolved, that a uniform code of pre-trial procedures and penalties for all felonies should be established throughout the United States.

The resolution indicates—and we have previously discussed the fact—that there are two differing parts of the criminal justice system. The first part, pre-trial procedures, includes all those steps taken before the trial begins. Pre-trial procedures would specifically focus our attention on any of the following steps: arrest, investigation, detention, the setting of bail or release, prosecutor screening, indictment through the use of a grand jury or information, and the preliminary hearing. The second phase of the criminal justice system, the procedures involved in sentencing, includes the pre-sentence investigation and the sentencing by a judge or jury. Although the trial and the area called "corrections" are not the focus of the change suggested, the potential effects upon them by establishing uniform codes are not to be ignored.

Another limitation to the question is that it is to apply to felonies and not to misdemeanors and traffic violations. A working definition for a felony, utilized by most in the field, is that it is a crime serious enough to warrant a statutory maximum of twelve or more months. A misdemeanor is anything less than that.

Thus, we are to concern ourselves with the presence or absence or inadequacies of codes of procedure; with the presence or absence of uniformity in those codes; and with the effects those codes or the lack of them have on those involved with making decisions about the accused felon as he or she moves through the criminal justice system. Two causal forces constitute our concern: (1) the absence, weakness, or strengths of codes of procedures, and (2) the presence or absence of uniformity. Thus we must examine any injustices or harm that may be arising from the absence or weaknesses of the uniform codes of procedure and then examine the values to be gained by their formulation and adoption.

Throughout the criminal justice system a variety of decisions must be made by many different people. Choices must be made among the alternatives available to those in charge. Wide differences among these decisions for treatment of felons may be resulting in grave injustices. In order to debate codes of uniform procedures, we must focus our attention on these decisions and then explore the possible significant harm arising from such disparities in the system.

The police must make decisions: to arrest or not to arrest, to make extensive investigations into the particular crime committed or not, to detain or not, to book or not. If the accused person is booked, authorities must decide whether the person should be released on his or her own recognizance, released into the custody of some other person, released on bail (and if so, how much), or held in detention in jail. Those in charge of prosecution must decide whether or not to dismiss charges, use diversion, reduce charges, plea bargain in order to handle the case more quickly, or carry through on the original charge. In many areas, at the indictment step the choice must be made between the use of a grand jury or the step known as "information." For the preliminary hearing and/or the arraignment, the defendant must decide whether to hire a lawyer or use someone appointed by the court. The defense attorney must guide the accused in choosing among the pleas of guilty, not guilty, or not guilty by reason of insanity. Again, the trial judge, the prosecutor, and the defense attorney must choose among dismissing the charges, reducing them, or continuing on the original charge. Before coming to trial many decisions must be made by both the prosecutor and the defense attorneys in their preparation. When time will strengthen the case, there may be maneuvering in order to delay the trial date.

After the trial the probation officer must make numerous decisions in the presentence investigation and in the choice of material that should be included in the report to the judge. In most jurisdictions the judge has wide choices for the final sentence. The indeterminate sentence permits the judge to set the minimum at zero and the maximum as high as the law allows. Although many jurisdictions demand a life sentence for first-degree murder, it is not uncommon for a judge to pronounce a zero to fifteen years or a zero to twenty years sentence for second-degree murder. The judge may also choose to suspend the sentence or place the felon on probation.

We have outlined in specific detail the points at which important decisions must be made about the handling of the accused felon. At each point it is possible that the decisions will vary so greatly that injustice or harm can occur. It is interesting to note that those several organizations interested in strengthening the criminal justice system have done just that by setting up recommended standards for each step in the judicial process.

Let us examine some of the areas where the disparities are so great that some leaders in the field call for change. The first area of grave disparities arises at the police investigation step. The majority of crimes against property go unsolved. The seriousness of this problem is revealed in the *Uniform Crime Reports for 1974*. Seventy-three percent of all robberies, 80 percent of all larcenies, 82 percent of all burglaries and 85 percent of all auto thefts are unsolved. It

has been estimated that nearly 24 million persons have smoked marijuana and yet the arrest rate is less than 450,000 annually. If uniformity of treatment for all violators of the law is an important goal for promoting justice, such disparities suggest how far we are from its attainment. Police are pressured by society to place greater emphasis upon solving crimes against persons. The 80 percent clearance of murder cases, 78 percent for negligent manslaughter, 63 percent for aggravated assault, and 51 percent for forcible rape reveal the results of making such decisions.[1]

A second area where disparities that bring injustice arise is in detention, booking, and, particularly, setting bail. Once arrested and booked, the accused felon must await prosecution and trial. Murder is so serious that bail is denied or set so high that it is unlikely to be raised. Furthermore, the Eighth Amendment of the Constitution only forbids *excessive* bail. Disparities arise because persons of wealth and prominence have a much greater chance of being released upon their own recognizance than the poor, blacks, and other minority groups, who have a disproportionate rate of detention. Despite the Congressional Bail Reform Act of 1966, disparities still exist.

Tully McCrea and Don Gottfredson tell us about a 1967 study in New York:

> Where the bondsman's fee was five percent, 25 percent of arrested persons were unable to furnish bail of $500.00—i.e., raise $25.00; 45 percent failed at $1,500.00 or a fee of $75.00; and 63 percent failed at $2,500.00 or a fee of $125.00. Since the bondsman's fee in many communities is ten percent, it seems likely that in those jurisdictions the percentages would be even higher. Thus, even though everyone is considered to be equal under the law, the actual fact is that the bail system discriminates against the poor.[2]

There are great disparities in the laws concerning victimless crimes and in the enforcement of these laws. In some jurisdictions only the selling of hard drugs and marijuana is a felony, but in others possession and use may carry such a penalty. Many argue that only the selling of hard drugs and marijuana should be considered a felony, and in fact, many jurisdictions are treating possession and use as misdemeanors or petty offenses. Perhaps the way to achieve uniformity would be to leave selling as a felony, utilizing a standardized penalty, while making possession and use legal. The laws against intoxication, vagrancy, homosexuality, and gambling could be repealed.

Some might argue that uniform codes of pre-trial procedures and penalties for all felonies are not warranted. However, such changes would have a drastic effect on the processing of felons. Many experts who are suggesting a change of standards are advocating these uniform procedures and penalties in the revision of state and federal criminal codes.

Sets of standards for various other types of diversion have been devised by some agencies studying these problems. The fact that some governmental jurisdictions adopt these standards within a relatively short period of time, while others do so much more slowly or not at all, results in disparities from one jurisdiction to another. Because of such changes as these, the goal of uniform codes of procedure will be slow in coming or, at least, difficult to achieve.

Much maneuvering occurs during the time the prosecutor is preparing to bring the accused to trial. This maneuvering, which results in many disparities, continues all the way from the preliminary hearing through arraignment and into the trial. Great pressure is placed upon the suspect to enter a plea of guilty. In recent years plea bargaining has assumed gigantic proportions. The prosecuting attorney can "chalk up a win," the defendant gets off with a reduced sentence, and the judge finds the congestion of his court reduced. The evidence of lack of uniform treatment is so widespread that many of those advocating guidelines of reform recommend that the practice be abolished. The harm ranges all the way from a violent criminal getting off with a light sentence to an innocent person pleading guilty merely to avoid a long and costly trial.

Pre-trial maneuvering may also bring long and harmful delays, a problem which has already been discussed. When trials for some are delayed as much as one to two years, some kind of reform, whether uniform guidelines or codes, becomes an absolute necessity.

There are some suggestions that reform is needed in the area of pre-sentence investigations. However, the problems seem to arise from the lack of accuracy in the reports more than from a lack of uniformity, although there is a lack of uniformity in the amount of material made available to the judge. In addition to the report of the arresting officer and the statement of the defendant, some reports contain the input of many professionals, such as psychiatrists, psychologists, and medical doctors, as well as many interviews with acquaintances. Again, there exists a great deal of difference in the amount of emphasis placed upon these reports by judges. The amount of emphasis, which can vary from a great amount to none at all, would seem to depend upon the attitudes of the individual judge far more than upon any legislated guidelines or uniform procedures.

The second part of this topic calls for a "uniform code of penalties for all felonies." This implies that there is a serious lack of uniformity in the penalties as prescribed in the statutes of the fifty states and the federal government and/or a serious lack of codes or guidelines for judges who pronounce those sentences. The following are two examples of the lack of uniformity within the statutes:

> A recent study of the Colorado statutes disclosed that a person convicted of first-degree murder must serve ten years before becoming eligible for parole, while a person convicted of a lesser degree of the same offense must serve 15 or more years. . . . Under Federal law, armed bank robbery is punishable by fine, probation or any prison term up to 25 years, but in cases involving armed robbery of a post office, the judge is limited to granting probation or imposing a 25-year sentence.[3]

On November 20, 1975, Senator Edward Kennedy submitted a bill to the Senate to establish guidelines (or a code) to bring about greater uniformity of sentencing among federal district judges. In presenting the bill, he cited the following statistics:

> The most recent statistics show that in 1974, while the average federal sentence was 42.2 months, it was only 18.4 in the southern district of

> Georgia, but 94.9 months in the western district of Michigan. Bank robbers receive an average term of imprisonment of over 11 years nationwide, but receive 17 years in the northern district of Georgia, but only 5½ years in the northern district of Illinois. . . . My bill is the beginning of a concerted legislative effort to deal with sentencing disparity. The bill does the following: First, it establishes for the first time certain uniform general criteria which all Federal courts must consider in formulating a sentence for a convicted defendant. These criteria refer the court generally to the nature of the offense, the characteristics of the defendant, the need for the sentence imposed to reflect the seriousness of the offense, the need for just punishment, and the requirement that the sentence imposed act as a deterrent.[4]

Noah S. Sweat, Jr., a law professor at the University of Mississippi, suggests both the harm and the possible solution:

> Leaders in the field of corrections know that disparity in sentencing is a chief cause of the failure of rehabilitative efforts. The prisoner who feels he has been unfairly treated by the courts and who believes he has received an unjust sentence, even though he has not, especially when that sentence is compared with much lesser sentences received by others for the same crimes, is often hopeless as a subject for rehabilitation. . . . If more consistency is to be achieved in sentencing, then penal statutes obviously must be made more uniform.[5]

Other disparities which will come up for debate—and which are evidenced by many studies—are experienced by the disproportionate numbers of the poor, the blacks, the Latin Americans, the Mexicans and other ethnic groups in our prisons. Particularly noteworthy are the blacks. Care must be exercised to discern how much of this is due to lack of uniformity of pre-trial procedures and penalties and how much is due to other causes. Two causal factors extremely noticeable among the majority of those who face our parole board are (1) a lack of high moral standards and close interpersonal relations within the home where the criminal grew up and (2) poor economic conditions. These two factors exist regardless of race or color. One can readily suspect that race or color can make things worse as the individual proceeds through the steps of our criminal justice system. However, no establishment of a uniform code anywhere within the system can change these social and economic factors; they can only be changed by forces which are outside of the control of the criminal justice system.

Affirmative Analysis

Since the affirmative teams are going to be suggesting "uniform codes," they will be spelling out various factors within those codes, factors which have been studied and worked out by so many task forces that it would do us little good at this point to go into them in any detail. Rather, we would recommend that debaters write to the U.S. Government Printing Office in Washington, D.C. 20402 and purchase *A National Strategy to Reduce Crime* ($2.55) and *Corrections* ($6.30). Both are published by the National Advisory Commission on Criminal Justice Standards and Goals. The first of these books lays out the

most highly recommended set of standards for all three debate questions, while the second is a more detailed discussion of the penal system.

Debaters may have trouble on this question with the words "codes of procedure." We think of a "criminal code" as the laws described in the statutes. Once these are enacted, various divisions set up either "guidelines" or "rules of procedure." The compilations of the National Advisory Commission on Criminal Justice Standards and Goals, the American Bar Association, and the various other groups mentioned early in this analysis lump all three of these together under the word "standards." This means that careful study must be made as to who must assume the responsibility of implementation. Debaters must be certain that they understand which standards state legislatures, Congress, and local legislative groups must enact and which must be set up by divisions or departments within the penal system. Standards which serve as guidelines for hiring personnel would hardly be statutory material, while making sentencing uniform throughout the United States would require statutory action by Congress and the fifty state legislatures. Also, debaters must remember that Congress cannot enact state laws—the temptation to use this as an easy way to achieve uniformity must be avoided.

Negative Analysis

When considering the negative case, the preparation is in some respects similar to the affirmative. Debaters must know both the steps in the pre-trial procedures and where disparities may arise. They must challenge the affirmative to establish injustices that are both quantitatively and qualitatively great at each step along the way. Ten million people were arrested in 1974; the affirmative must show that great numbers of these people were significantly harmed by a lack of uniform codes. For example, for how many people was rehabilitation impossible because of a lack of a uniform code of sentencing. The *Uniform Crime Reports for 1974* ($3.60) will help greatly in debating this subject. It, too, can be purchased from the Government Printing Office.

Secondly, a strong case can be made that uniform procedures will not necessarily bring greatly improved justice. Even if the system achieves uniformity, is it worth the struggle for implementation? In fact, uniformity at the expense of individual consideration may bring the greatest injustice. People committing crime are as different as all others in society. It is far better to leave the system flexible enough to meet the needs of the accused rather than coercing the individual to fit the system.

A third area for negatives to explore is the great difficulties that would be encountered in implementation. So many people in so many areas are essential to implementation that the task becomes endless. There is considerable literature on this, and there should be no trouble in discovering the various areas of difficulty. The American Bar Association is working extensively in this field.

Finally, the disadvantages to be argued must fit the particular code or codes which the affirmative advocates. Study those areas of anticipated changes and develop other possible areas. At the moment one might predict that codes which

merely make recommendations will probably not bring any bad results. Statutory changes can.

To debate or discuss the criminal justice system of the United States requires great understanding of our laws and the procedures through which the criminal passes and, above all, an understanding of how and why people behave as they do.

NOTES

1. *Crime in the United States—Uniform Crime Reports for 1974* (Washington, D.C.: Federal Bureau of Investigation, 1975), p. 43.
2. Tully L. McCrea and Don M. Gottfredson, *A Guide to Improve Handling of Misdemeanor Offenders*, for the National Institute of Law Enforcement and Criminal Justice (Washington, D.C.: Government Printing Office, 1974), p. 4.
3. *The Challenge of Crime in a Free Society*, a report by the President's Commismission on Law Enforcement and the Administration of Justice (Washington, D.C.: Government Printing Office, 1967), p. 142.
4. Senator Edward Kennedy, "Congressional Record," November 20, 1975, on S. 2699, p. 20514.
5. *We Hold These Truths: Proceedings of the National Conference on Corrections* (Williamsburg, Virginia: National Conference on Corrections, Law Enforcement Assistance Administration, 1971), pp. 144-145.

Gun Control

By William Tracy

Discussion: What policy should the federal government adopt concerning possession of firearms by United States citizens?

Debate: Resolved, that a comprehensive program of compulsory gun control should be established throughout the United States.

The private possession of firearms, particularly handguns, has become a hotbed of controversy in the United States. The center of the storm concerns the regulation of the vast number of privately owned firearms within this country. Among the 210 million privately owned firearms in the United States, close to 40 million are handguns. Nearly three million handguns are produced each year in this country; one handgun is sold every thirteen seconds.[1] In light of the vast number of handheld firearms at present, and the numbers are increasing within the United States, citizens from all walks of life are becoming increasingly concerned over the issue of gun control.

Present system controls (and, as we shall see later, controversies) stem from the Second Amendment to the Constitution. This Second Amendment of the Bill of Rights guarantees that "A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." This amendment refers to the collective right to bear arms and not to the individual right to possess arms. The Supreme Court of the United States clarified the above position in 1939 when it upheld the constitutionality of the 1934 National Firearms Act. Associate Justice James C. McReynolds, speaking for the Court, wrote: "With obvious purpose to assure the continuation and render possible the effectiveness of such forces the declaration and guarantee of the Second Amendment were made. It must be interpreted and applied with that end in view."[2] In short, the Court affirmed that the Second Amendment was intended solely to support the militias, the union of which is now the National Guard.

Three major federal gun controls have been enacted in the United States since 1900:

The Federal Firearms Act of 1934 required compulsory registration of all gangster-type weapons and other so-called destructive devices. This Act was a uniquely designed response to organized crime.[3]

The Federal Firearms Act of 1938 required the licensing of all firearms dealers and ordered that all manufacturers and dealers in firearms keep complete records of all firearms transactions. These records must include the make, model, type, caliber or gauge, and serial number of each and every firearm bought or sold, the date such firearm was bought or sold, and the name and address of the person or business from whom the firearm was purchased or to whom the firearm was sold. Gunsmiths must retain similar records. These records must be maintained permanently and made available to law enforcement officers upon request.[4]

In 1968 the Federal Firearms Act of 1934 was expanded and became the National Gun Control Act. This law prohibits all foreign military surplus weapons from entering the United States and bans all foreign commercial weapons except for "sporting purposes." It prohibits the interstate and mail order sale of guns between nondealers and limits the over the counter and intrastate mail order sale of handguns to state residents 21 years or older. Finally, the new law forbids the possession of guns by convicted criminals.

These programs of registration now cover some 125,000 firearms and weapons and, importantly, do not affect sporting rifles and shotguns or handguns used by hunters and target shooters.

With reference to state and local controls, none of the fifty states have voluntary firearms registration.[5] Only eight states require licenses for buying handguns: Hawaii, Illinois, Massachusetts, Michigan, Missouri, New Jersey, New York, and North Carolina.[6] Most of these states do not require licenses to own guns; therefore, a gun can be purchased by a licensee and given to a nonlicensee. In only 29 states must a permit be obtained to carry a handgun.[7]

Locally, six cities lead the way in gun control in the United States: Chicago, Miami, New York, Philadelphia, San Francisco, and Toledo. The Sullivan Law in New York City is by far the most restrictive, requiring extensive investigation before a license to purchase a firearm is issued.[8]

This year's debate resolution thus calls for a compulsory program of federal gun control in order to comprehensively regulate the purchase and ownership of firearms, especially handheld guns.

Affirmative Analysis

The need for gun control. There is powerful support for the affirmative debater in the need area of this resolution. The *Uniform Crime Reports for 1974*, the latest available statistics on crime in the United States, are particularly strong and are highly recommended by this author for evidentiary use. These reports indicate the widespread use of firearms in crime, specifically murder. In 1974, firearms were the weapons used in 68 percent of all the murders reported; 54 percent of the homicides were a result of handgun use, 5 percent involved rifles, and 9 percent involved shotguns.[9] A comparative study for the past six years shows an increase in the use of firearms in homicides from 65 percent in 1969 to 68 percent in 1974.[10] The Massachusetts Council on Crime and Correction reported the following:

> Guns are responsible for an average of 69 deaths each day in America. One out of every hundred deaths in the United States—including natural deaths—is caused by a gun. Forty percent of the victims are 19 years old or less. In addition, some 200,000 people are wounded by firearms each year, resulting in paralyzation, sterilization, dismemberment, blindness, deafness and other disabling effects.[11]

The Commission's conclusion was equally grim: "While there were 627,000 Americans killed in all our wars from the Revolution to 1968, at least 800,000 citizens have been killed by privately owned guns since 1900."[12]

Whether they are used with premeditated intent, in the heat of passion, or by accident, it is obvious that guns lead to a significant amount of death and suffering within the United States each and every day.

The problem of gun control becomes even more prominent when the danger to law enforcement officials is considered. The *Uniform Crime Reports for 1974* illuminate this problem: "One-hundred twenty-eight or 97 percent of the law enforcement officers killed in 1974 were slain with firearms. Handguns were used in 95 of these deaths, shotguns in 21 and rifles were used to kill twelve of the officers. Eleven officers were slain with their own firearms."[13]

Furthermore, it should be noted that the murder rate in the United States is highest where guns are the most plentiful. The following statistics provide support for this contention[14]:

	South	*Midwest*	*West*	*N.E.*	*U.S.A.*
Gun Ownership	59%	51%	49%	33%	50%
% Homicides by Gun.....	72%	66%	59%	44%	65%
Overall Murder Rate per 100,000, 1969.....	10.4	6.1	6.1	5.2	7.2

It is frightening to note that firearms are used to kill close acquaintances. In 1974 the percentage of murders with spouse killing spouse was 12.1 percent; parent killing child, 2.7 percent; other relative killings, 8 percent; lovers' quarrels, 6.2 percent; other arguments, 43.2 percent.[15] Quick addition shows us that only 28 percent of the homicides were "hard core" killings. No one is safe in an armed household, where in the heat of passion a gun is available to release the tension and frustration of the moment.

The affirmative debater, then, has a very supportable need position in terms of the harm caused by firearms in this country. Considering the statistics, the affirmative debater should have no trouble finding support material from law enforcement and government officials across the nation, as well as from other sources.

Solutions. Not surprisingly, the citizens of America are concerned about gun control. In all the modern polls a majority of the public has supported firearms control. "In a 1972 Gallup Poll, 71% of all persons polled and 61% of all gun owners polled, indicated they were in favor of gun control."[16]

There are different alternatives open to the affirmative debater in instituting a compulsory federal gun control program that exceeds status quo regulations. Initially, the affirmative debater can call for all states to enact firearms legislation under federal guidance and assistance. This proposal could also require licenses to possess firearms throughout the United States. Secondly, the penalties for crimes committed with a gun could be increased. The National Advisory Commission on Criminal Justice Standards and Goals urges enactment of legislation providing for an extended prison term with a maximum of 25 years for committing a felony while in possession of a gun.

Also, the increase of stop and frisk searches at police discretion in order to search suspicious persons and automobiles for illegal firearms would undoubtedly enhance police detection of illicit gun activity.

The more drastic but very effective alternatives available to the affirmative debater deal with total prohibitions:

First, upon immediate enactment of necessary legislation, and under penalty of fine and/or imprisonment, all manufacture of handguns, their parts, and ammunition within the states would be prohibited. This proposal could still allow for the production of firearms for the military and for law enforcement agencies. This hits at the primary source of the gun problem and is an attractive concept for the affirmative debater.

In order to eliminate the problem of purchase from previously stockpiled guns, parts, and ammunition, the affirmative debater would prohibit the sale of the firearm he or she chooses to regulate. This sort of legislation would eliminate the source of any new handgun purchases as well as the sale of second-hand weapons.

Finally, the most extreme measure the affirmative debater could call for would be to prohibit the private possession of handguns (or any firearms). By establishing a future deadline when possession of certain firearms, except by authorized personnel, would be prohibited under penalty of fine or imprisonment or both, the ultimate gun control would finally be achieved.

There is much support material available to evidence these potential solutions independently or combined. This material should be meticulously sought out.

Advantages of the affirmative plan. By advocating a compulsory federal program of gun control, the affirmative debater could claim significant advantages. Registration and licensing alone would enable law enforcement agencies to solve crimes by determining firearms ownership, would enable police to arrest persons carrying unregistered firearms, and would make it more difficult for undesirables to obtain weapons.

Prohibitions previously discussed would obviously delimit the number of firearms in private possession and would result in fewer crimes being committed. These proposals would help prevent murder, suicide, and firearm accidents.

Figures available from countries already enforcing stringent gun control procedures support the affirmative causal relationship—that gun control will solve need areas or provide resolutional advantages. Comparative analysis provides

extremely strong support (even in light of cultural differences). In Great Britain, where a certificate issued by the police is necessary to buy or own a gun, there are under 500 guns per 100,000 people. In the United States, there are at least 12,000 guns per 100,000 people. Thus in 1966, Great Britain—population 54.5 million—had 27 gun homicides, while in Houston, Texas, there were 150 gun murders among 1.5 million people.[17] In Tokyo, Japan, where the population is 11 million people and where it is illegal to own, possess, or manufacture handguns, there was only one handgun murder in 1971. In contrast, in Los Angeles County there were 7 million people and 308 handgun homicides.[18] Law enforcement slayings by guns reflect the same trends. These figures are extremely powerful for the affirmative debater.

Negative Analysis

In support of the status quo. That part of our society opposed to gun control maintains, contrary to the Supreme Court's opinion, that the Second Amendment guarantees the individual's right to possess firearms. The anti-gun control people insist that it is unconstitutional to prohibit their right to protect their lives and properties and that all able-bodied males between 18 and 45 are defined as being part of the state militias based upon a 1903 U.S. law defining such.[19] Furthermore, supporters of the right to possess firearms argue that at least half of the state constitutions go beyond the Second Amendment and spell out the right of an individual to bear arms and to protect home and property. These states are Alabama, Arizona, Colorado, Connecticut, Florida, Georgia, Idaho, Indiana, Kentucky, Michigan, Mississippi, Missouri, Montana, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, Vermont, Washington, and Wyoming.[20]

The negative debater's position would best be enhanced by arguing that the natural flow of the status quo will effectively regulate firearms and the resulting problems. Support is found in the fact that virtually all states already regulate or prohibit the carrying of concealable firearms.[21]

One of the strongest positions maintained in opposition to the rising statistics on criminal activity involving firearms is that the person, not the gun, commits the crime. Furthermore, with regard to registration, opponents of gun control point out that criminals don't register guns and that the presence or absence of registration is not a determining factor in either suicides or accidents. In other words, these events occur with registered or unregistered firearms. Along the same lines, gun control opponents note that many firearms are stolen and tracing them would only lead to innocent persons.

Negative analysis dealing with affirmative support material should scrutinize statistical compilation and comparison, be concerned with the many factors that must be considered, and emphasize statistical variance in support of the negative position.

Objections to affirmative solutions. Beyond the denial of constitutionally guaranteed rights to bear arms, the crux of negative objections to adoption of the resolution center on whether or not the benefits of registration or prohibition programs, whatever they might be, are worth the cost of administration. Ad-

ditionally, one might suggest that monies might be spent in other areas of crime prevention with better results.

Data are available on the probable costs of a national firearms registration program. Initially, opponents of such a program argue that compulsory gun registration would require one of the largest computer operations ever undertaken. Estimates on completing such a system suggest that it would take two years and would involve a staff of several hundred experts.[22] Each time a gun was bought, sold, or traded, and each time an owner moved, the information would have to be changed and updated.

The costs of establishing such a system of firearms registration would be $25 million, with annual continuing costs of $22 million.[23] These costs are in terms of 1968 dollars and should be considered quite conservative. Experts argue that if licensing is included in such a program, initial costs could elevate to $1 billion or more.[24] As an example, in New York City, which requires firearms to be licensed, the average cost of processing an application for a pistol permit in 1968 was $77.87. Therefore, if this procedure were applied to the 40 million firearm owners, the cost could be placed at $2,914,800,000.[25] Although this figure is theoretical, the costs are staggering.

The above analysis does not consider the costs of maintaining a totally prohibitive structure, yet it is safe to assume that any additional bureaucracy administered and staffed on both the state and federal level will incur massive expenses.

On the periphery of these objections lies the fact that if firearm markets were drastically reduced, the natural laws of economics would force the price of weapons, parts, and ammunition to skyrocket. In order for firearm manufacturers to retain any level of profitable operation, the price of the product would have to be raised, especially if the market were drastically cut back. Therefore, the Armed Forces and law enforcement agencies would require vast amounts of additional monies, raised through tax dollars, to purchase necessary materials.

Finally, the negative debater could argue that such vast sums of money could be better spent on other programs. Negative arguments could support contentions that firearm crime could be prevented by better public education programs and increased training, personnel, and material for law enforcement officials. Likewise, more advantageous programs to increase court efficiency or encouraging penal reform should receive money rather than gun control programs that will fail to deter criminals or prevent firearm accidents, suicides, and murders.

Overall, the strength of any negative team with regard to this resolution revolves around the unworkability and ineffectiveness of gun control in a free and large society. The total unworkability of any affirmative proposal can easily be summed up by the failure of gun control to achieve three major goals. First, any program of gun control instituted in 1976 will fail to regulate the millions of firearms already in existence. No affirmative team can possibly guarantee that those firearms already in public hands will be voluntarily registered or rendered inoperative. Second, gun control legislation will not stop the assassinations of public figures or acts that are committed by political terrorists or mentally defective persons, for the people who commit these crimes ignore the law re-

gardless of the penalties. Finally, the mere definition of a criminal or of criminal use portends the ultimate failure of any gun control program—no amount of legislation will prevent the illegal use of firearms by the criminal element in our society.

NOTES

1. *A Shooting Gallery Called America* (Boston: Massachusetts Council on Crime and Correction, 1974), p. 1.
2. Quoted from Ashley Halsey, Jr., in *The Truth about the Second Amendment* (Washington, D.C.: American Rifle Association, 1973), p. 2.
3. *A Shooting Gallery Called America*, op. cit., p. 11.
4. Alan S. Krug, *Firearms Registration: Cost vs. Benefits* (Riverside, Connecticut: National Shooting Sports Foundation, 1970), p. 3.
5. Ibid., p. 3.
6. *A Shooting Gallery Called America*, op. cit., p. 7.
7. Ibid.
8. Ibid.
9. *Crime in the United States—Uniform Crime Reports for 1974* (Washington, D.C.: Federal Bureau of Investigation, 1975), p. 17.
10. Ibid., p. 18.
11. *A Shooting Gallery Called America*, op. cit., p. 1.
12. Ibid.
13. *Uniform Crime Reports for 1974*, op. cit., p. 226.
14. *A Shooting Gallery Called America*, op. cit., p. 2.
15. *Uniform Crime Reports for 1974*, op. cit., p. 19.
16. *A National Strategy to Reduce Crime*, National Advisory Commission on Criminal Justice Standards and Goals (Washington, D.C.: Government Printing Office, 1973), p. 139.
17. *A Shooting Gallery Called America*, op. cit., p. 3.
18. *A National Strategy to Reduce Crime*, op. cit., p. 141.
19. *The Truth about the Second Amendment*, op. cit., pp. 1-4.
20. Ibid., p. 4.
21. Krug, op. cit., p. 1.
22. Ibid.
23. Ibid., p. 2.
24. Ibid.
25. Ibid.

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